

# Clarification of the definition of Importer of Record under Customs Act

October 2023

## In brief

Under new Customs related laws and regulations effective October 1, 2023, foreign companies that import into Japan without a sales transaction, but use a separate local company to act as importer of record, need to assess their supply chains because this arrangement is generally no longer permitted under Japanese Customs related laws and regulations.

If their current IOR will no longer be qualified to be IOR under the revised definition, the non-resident entities will be required to be the IOR moving forward, which will entail substantial administrative procedures.

Careful consideration should also be given to the potential impact of input tax credit recovery on import consumption taxes through consumption tax filing procedures.

## In detail

### 1. Status of changes

Considering an apparent increase in customs non-compliance associated with e-Commerce ('EC') imports, Japan Customs decided to clarify the definition of the 'importer of record (Importer of Record : 'IOR')' to bring more non-resident companies under Customs direct supervision. The new IOR definition, which was included in the Basic Circular to the Customs Act, becomes effective on 1 October 2023. The definition provides new requirements for IOR in addition to the IOR definition under import sales transactions. Specifically, an IOR who imports goods into Japan without a sales transaction is required to 'have a right to dispose' or 'to act for the purpose of import'.

#### IOR clarified in the Basic Circular to the Customs Act

- (1) Where importation of goods is based on an import sales transaction, the IOR is, the consignee indicated on the invoice (or bill of lading, etc. where there is no invoice) for cargo imported through normal import transactions, in principle.
- (2) Where importation of the goods is NOT based on an import sales transaction, the IOR is:
  - I. the person who, at the time of the import declaration, has the right to dispose of the imported goods after release of goods
  - II. the person who acts for the purpose of import other than 1, such as:
    - a. a person who leases and uses goods imported under a lease contract
    - b. a person who sells in its own name commissioned goods imported for consignment sales
    - c. a person who processes or repairs goods imported for processing or repairing
    - d. a person who disposes of goods imported for disposal or destruction

It was initially understood that Japan Customs intended to control imports related to EC by this series of amendments. However, the aforementioned IOR definition is not limited to the EC commerce. Besides, there are indications that Japan Customs try to enforce this strictly. Since there is a possibility that some third

parties that are currently acting as IOR may not qualify under these requirements, it is highly recommended that those who import goods into Japan using any services provider check if they are impacted by the new regulation, with the new definition in mind.

In the event that the non-resident entities need to act as the IOR, the businesses will be required to take the following actions.

- (1) Appointment of ACP(Attorney for Customs Procedure) and registration with Customs  
Any non-resident entities acting as IOR need to appoint a person or entity with domicile in Japan as an Attorney for Customs Procedure ('ACP') to perform customs formalities on their behalf. If no ACP has been appointed, Customs will be able to request non-resident entities that do not have ACP to appoint one. Where such request is not complied with, Customs can appoint an ACP for the non-resident entity.
- (2) Season Tickets  
A sale between non-resident entities is excluded from the definition of transaction value in Japan for customs valuation purpose. As such, the non-resident IOR will need to discuss the customs valuation for clearance purpose with Japan Customs prior to the import by obtaining a Season Ticket.
- (3) Duty payment mechanism  
Duty payment can be made in cash, through a direct debit bank account, or multi payment network. It should be noted, however, use of the direct debit bank account requires a corporate number issued by Japan National Tax Bureau and a Japan based bank account associated with the customs clearance system called NACCS(Nippon Automated Cargo and Port Consolidated System).

## **2. Recovery of import consumption taxes through the input tax credit**

For consumption tax purposes, the person entitled to the input tax credit for import consumption tax is considered the person who withdraws the relevant taxable foreign goods from bonded areas (i.e., the person who declares the import). The amendments to the Customs related laws and regulations have clarified the definition of such person.

For example, in cases where an agent who does not have the right to dispose of the goods at the time of the import declaration and does not fall under the category of 'a person who acts for the purpose of importation' as defined in the revised Circular intends to act as the IOR, such agent may not be considered the person who withdraws taxable foreign goods and, therefore, may be disallowed from the claiming input tax credit for import consumption tax. In such cases, the offshore distributor may also not be entitled to the input tax credit for import consumption tax as there is no import permit naming that offshore distributor as the importer.

From 1 October 2023 onwards, in accordance with the revised legislation, if an import declaration is made in the name of a foreign seller who has the right to dispose of the goods at the time of the import declaration, the foreign seller shall declare an input tax credit for import consumption tax in its consumption tax returns in order to recover such import taxes. If the foreign seller is a tax-exempt enterprise (i.e., it is not filing a consumption tax return), it is necessary to submit a notification to elect to become a taxable enterprise for consumption tax purposes and file a consumption tax return in order to reclaim the import consumption tax.

## **3. Uncertainty of operation by local Customs**

Pursuant to the Japan Customs Act, the liability of duties and import consumption tax is attributed to the IOR. Further, an old case concluded that it was reasonable to impose the obligation of duty payment on those who have the authority to receive and dispose of the imported goods, in light of the purpose of customs duty system, which is to secure fiscal revenues while protecting domestic industries. This expression was apparently taken into account and reused in the definition of IOR for the import without import sales transaction (see '1. Status of changes').

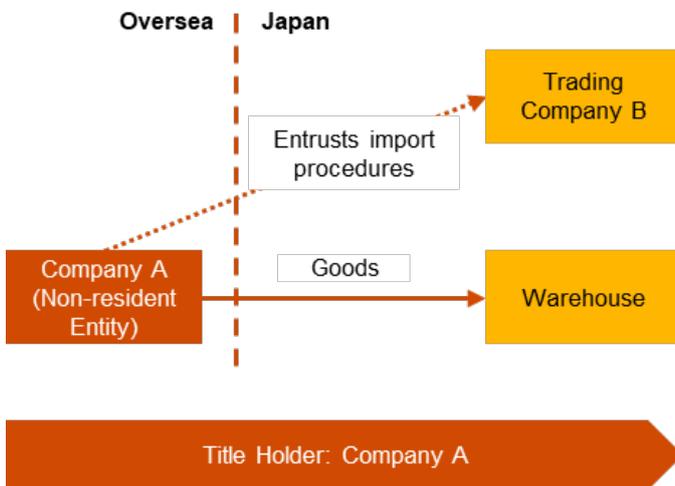
Based on the above old case, and in the context of the IOR definition, the 'right to dispose' may generally be interpreted as ownership, whereas the Basic Circular does not clearly define this term for the current purposes.

However, for example, a resident company, which would not necessarily have ownership of the goods at the time of importation, may be entitled to be an IOR if it sells the goods domestically in Japan under its own name (such as a commissionaire) under the list of exceptions provided by the Basic Circular for parties who have the 'purpose of import',

There are a wide variety of commercial arrangements in modern business that could be impacted by the clarification of IOR definitions (see below for examples). Also, given that 'the person who acts for the purpose of import' is not limited to the ones exemplified in the Basic Circular, it is expected the IOR under commercial arrangements other than the enumerated examples should be considered by local Customs on a case-by-case basis. Thus, uncertainty remains regarding actual operations at local customs.

#### 4. Examples of arrangement that are likely no longer permitted

##### (1) Trading company acting as IOR for a fee without participating in the sales transaction



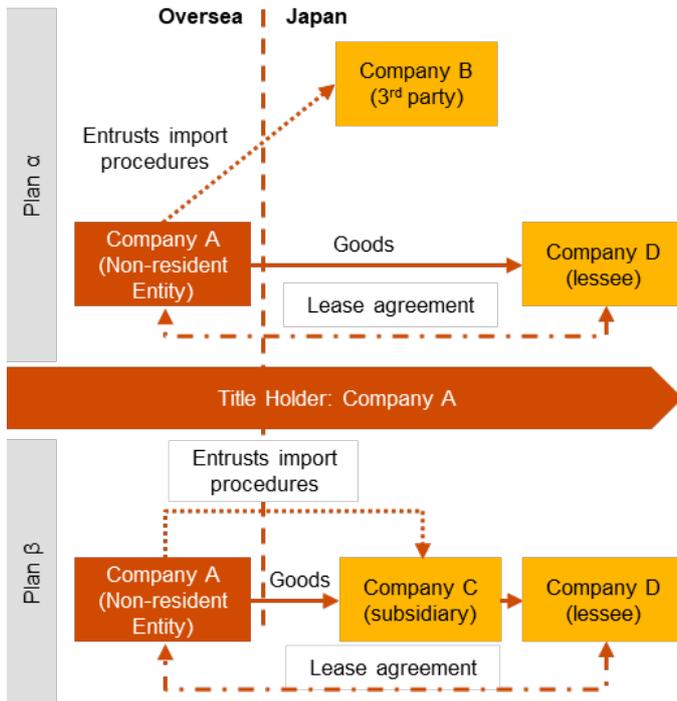
##### **AS-IS**

Company A maintains non-resident inventory in the warehouse in Japan after importing the products. In the meantime, it uses Trading Company B to act as IOR for customs clearance purpose, and to manage the goods after importation.

##### **TO-BE**

From October 1, 2023, Company A may be required to change the IOR moving forward since Company B is not involved with the buy-sell transaction, and does not have the right to dispose of the imported goods accordingly.

(2) Companies that provide their goods under lease, but import through a local subsidiary that provides technical support



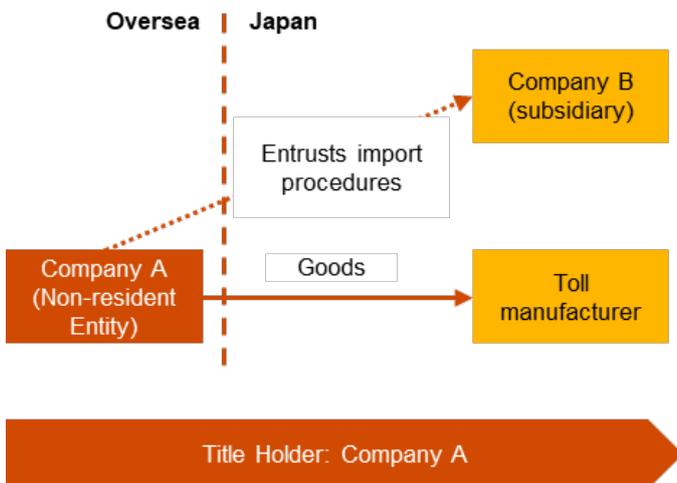
**AS-IS**

Company A, has a lease agreement in place with Company D. Currently, Company A sends goods directly to Company D and uses Company B to act as IOR (Plan α). However, it is also considering sending goods to Subsidiary C and using it to act as IOR (Plan β).

**TO-BE**

From October 2023, either Company A or Company D may be required to act as IOR in both cases, as (1) in Plan A, Company B is not involved with a buy-sell transaction or the lease, and (2) in Plan B, Company C does not purchase, lease nor use the imported goods (as the lessee is Company D).

(3) Companies that use a local subsidiary to act as importer of record for toll manufacturing without passing title to that subsidiary



**AS-IS**

Company A sends raw materials directly to a toll manufacturer in Japan but uses Company B (subsidiary of Company A) to act as IOR. Company A does not pass title to the Company B at any point.

**TO-BE**

From October 2023, either the toll manufacturer or the foreign company may be required to change the IOR to Company A, under this scheme.

**The takeaway**

This clarification of the definitions of which parties can act as importer or record could impact a wide variety of modern commercial arrangements. There is the possibility that local customs ports may interpret the IOR definition inconsistently during actual implementation. However, it should be noted that we expect Japan Customs to try to enforce these new rules strictly after they enter into force on October 1, 2023.

## Let's talk

For a deeper discussion of how this issue might affect your business, please contact:

### **PricewaterhouseCoopers WMS Pte. Ltd.**

Otemachi One Tower, 1-2-1 Otemachi, Chiyoda-ku, Tokyo 100-0004, Japan

Email: [jp\\_tax\\_pr-mbx@pwc.com](mailto:jp_tax_pr-mbx@pwc.com)

[www.pwc.com/jp/e/customs](http://www.pwc.com/jp/e/customs)

Robert Olson  
Partner

Masaru Ashino  
Senior Manager

Mio Hamada  
Senior Manager

### **PwC Tax Japan**

Otemachi One Tower, 1-2-1 Otemachi, Chiyoda-ku, Tokyo 100-0004, Japan

Email: [jp\\_tax\\_pr-mbx@pwc.com](mailto:jp_tax_pr-mbx@pwc.com)

[www.pwc.com/jp/tax](http://www.pwc.com/jp/tax)

Tsuyoshi Mizoguchi  
Partner

James Subin  
Manager

## Tax News

[View all news](#)

## Subscribe to the PwC Tax Japan Newsletter

[Subscribe](#)

## E-learning

PwC Tax Japan launched a new e-learning program called Tax Academy in October 2022, to support those wishing to develop their skills in the international tax field. For tax professionals outside Japan, the 'Introduction to Japanese taxes' series within Tax Academy provides a basic outline of the Japanese tax system, including corporate tax and consumption tax, and covers key points of international tax practice in English.

Please click here for details and to apply (charges apply):

[Click here to apply](#)

At PwC, our purpose is to build trust in society and solve important problems. We're a network of firms in 152 countries with nearly 328,000 people who are committed to delivering quality in assurance, advisory and tax services. Find out more and tell us what matters to you by visiting us at [www.pwc.com](http://www.pwc.com).

This content is for general information purposes only, and should not be used as a substitute for consultation with professional advisors.

© 2023 PricewaterhouseCoopers WMS Pte. Ltd, PwC Tax Japan. All rights reserved.

PwC refers to the PwC network member firms and/or their specified subsidiaries in Japan, and may sometimes refer to the PwC network. Each of such firms and subsidiaries is a separate legal entity. Please see [www.pwc.com/structure](http://www.pwc.com/structure) for further details.