

New Rules Allow Japanese Tax Authorities to Unilaterally Appoint Local Tax Administrator of Foreign Taxpayer

Issue 180, June 25, 2021

In brief

On 26 March 2021, as a part of Japan's 2021 Tax Reform, the Diet passed into law a new measure that allows the Japanese tax authorities to assign a tax administrator ("nouzei kanrinin") to a non-resident taxpayer that the authorities believe has a Japanese tax payment obligation.

Under this new measure, the tax authorities will have the ability to designate certain domestic parties, either related or unrelated to the offshore taxpayer (e.g., unrelated operators of digital platforms ("platformers")), as a tax administrator.

This law will apply from 1 January 2022.

Details of all the overall 2021 Tax Reform Proposals can be found here in print:

<https://www.pwc.com/jp/en/taxnews/pdf/jtu-20201214-en-169.pdf>

and here in webcast:

<https://www.pwc.com/jp/en/seminars/2021-japan-tax-reform.html>

In detail

1. Previous law and background to amendment

A non-resident person, such as a company without an office or establishment in Japan, that has a Japan tax filing obligation (a "non-resident taxpayer") is required to designate a Japan resident as its tax administrator.

Tax administrators are typically responsible for dealing with the tax administration on behalf of the taxpayer, including filing tax returns, receiving tax notices and making tax payments. Under the previous law, there were no measures in place allowing the tax authorities to unilaterally designate a tax administrator for a non-resident taxpayer where the taxpayer failed to do so voluntarily. As cross-border activity, in particular, digital transactions, have become more prevalent, the ability to contact and collect tax from non-resident taxpayers has become a critical issue for the Japanese tax authorities. The new law allows the tax authorities to more easily deal with a situation where a non-resident taxpayer fails to timely comply with the relevant tax administrator rules.

2. Changes in the law

Under the new law, where a non-resident taxpayer has not appointed a tax administrator, the tax authorities may issue a notice requesting the non-resident taxpayer do so within a designated period (up to 60 days). Alternatively, or at the same time, the tax authorities may directly contact certain

Japanese resident parties whether related or unrelated to the non-resident taxpayer (a “potential tax administrator”) and request that such party become the non-resident taxpayer’s tax administrator (see Table 1 for details of potential tax administrators). Note that the request alone will not automatically result in the potential tax administrator becoming the non-resident taxpayer’s tax administrator; the non-resident taxpayer must still formally appoint the potential tax administrator within a stated period after the non-resident taxpayer has received a request from the tax authorities.

If, however, the non-resident taxpayer fails to appoint a tax administrator within the maximum 60-day period after the non-resident taxpayer was contacted by the tax authorities, the tax authorities may officially designate the potential tax administrator as the actual tax administrator of the non-resident taxpayer, without the need to obtain consent from either the potential tax administrator or the non-resident taxpayer. Such mandatory designation will be binding for both the non-resident taxpayer and the potential tax administrator. The diagram below provides an example of the case where the tax authority appoints a domestic related party of the non-resident taxpayer as the tax administrator.

The designation will be made via written notice from the tax authority to the non-resident taxpayer and the potential tax administrator. The potential tax administrator as well as the non-resident taxpayer will be permitted to file an appeal to the tax authorities in relation to the designation.

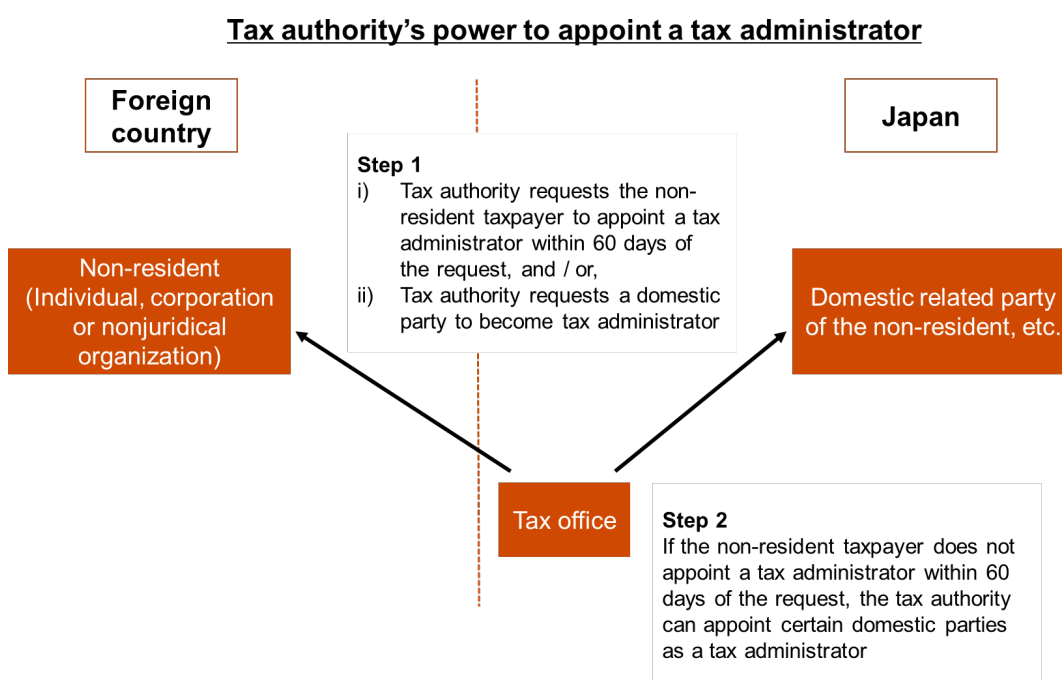


Table 1. The scope of residents that the tax authorities may designate as the tax administrator of a non-resident taxpayer (“potential tax administrators”).

Non-resident taxpayer	Potential tax administrator
Foreign corporate taxpayer	1) A corporation with a “special relationship” with the taxpayer, where “special relationships” include: <ul style="list-style-type: none"> i. A relationship in which one of the two corporations owns directly or indirectly 50% or more of the shares in the other corporation; ii. A relationship in which two companies are owned directly or indirectly 50% or more by the same person; iii. A relationship in which one company can substantially control the policies of the other company; or iv. If any of the above relationships exist through a chain relationship;

	2) An officer of the taxpayer, or the officer's spouse or relative
	3) A person with a close relationship to the taxpayer via contract
	4) Business operators that provide a place where the taxpayer continuously or repeatedly conducts transactions electronically (i.e., platformers)
Non-resident individual taxpayer	1) The spouse or other relative of the taxpayer
	2) A person with a close relationship to the taxpayer via contract
	3) Business operators that provide a place where the taxpayer continuously or repeatedly conducts transactions electronically (i.e., platformers)

The new law will apply from 1 January 2022.

3. Differences in responsibilities: non-resident taxpayer vs. tax administrator

The tax administrator is not liable for payment of the underlying tax, which remains the responsibility of the non-resident taxpayer. The tax administrator is, however, responsible for various administrative procedures, including handling of tax payments and refunds, filing of tax returns, and acting as point of contact in case of inquiries from the tax authorities. As the tax administrator is not an agent of the non-resident taxpayer, the tax administrator cannot represent the non-resident taxpayer in filing an appeal at the National Tax Tribunal or the courts in relation to the tax dispute of the filed tax returns, unless a separate agent agreement is concluded.

Although a non-resident taxpayer and a tax administrator do not have a principal-agent relationship, a tax administrator has the character of acting as an agent to deal with the tax administration as discussed above. Therefore, any act the tax administrator undertakes within its authority will legally affect the taxpayer. As a result, for example, the non-resident taxpayer will be liable for any penalty tax resulting from the tax administrator's non-filing or late filing of tax returns of the non-resident taxpayer.

The takeaway

This new law will impact both non-resident taxpayers and potential tax administrators of non-resident taxpayers. Foreign companies providing services in Japan, in particular those providing digital services through platformers in Japan, may become more accessible to tax authorities, which may result in more frequent inquiries to such companies. The new law may give the tax authorities additional avenues for enforcement of Japan's new Japanese consumption tax rules subjecting foreign persons that provide digital services to Japanese customers to tax. Likewise, the new rules may aid in enforcement where an offshore taxpayer has taxable capital gains on the shares of its Japanese subsidiary.

The change may also result in additional administrative responsibilities for domestic companies, especially for those platformers with large numbers of users conducting transactions on their platforms. Potential designated tax administrators should begin to consider the additional administrative burden that may result from this law change, as well as their best practice for handling such a designation.

A number of questions still remain regarding application of these new rules. For example, once a party has been designated as the tax administrator for a non-resident taxpayer, when can such tax administrator apply to be removed? Can the non-resident taxpayer appoint a different tax administrator to replace the designated one? It is hoped that the tax office will issue an official "Q&A" regarding the new rules going forward, which should provide additional clarity.

Let's talk

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

PwC Tax Japan

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

www.pwc.com/jp/e/tax

Kimihito Takano
Partner

Akemi Kito
Partner

Ryann Thomas
Partner

Naoya Uchiyama
Partner

Yumiko Arai
Director

Howard Weitzman
Director

PwC Tax Japan, a PwC member firm, is one of the largest professional tax corporations in Japan with about 720 people. In addition to tax compliance services our tax professionals are experienced in providing tax consulting advice in all aspects of domestic/international taxation including financial and real estate, transfer pricing, M&A, group reorganisation, global tax planning, and the consolidated tax system to clients in various industries.

At PwC, our purpose is to build trust in society and solve important problems. We're a network of firms in 155 countries with more than 284,000 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.

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

© 2021 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 for further details.