43. Japan

Introduction

Japan has had transfer pricing legislation in force since 1986, and it was one of the first countries to undertake advance pricing agreements (APAs) specifically to cover transfer pricing. Japan remains progressive and energetic in its approach to developing transfer pricing practice. The Japanese tax authorities have a tremendous amount of experience, and are committing more and more resources to the policing of the transfer pricing regime. To date, many significant tax assessments based on transfer pricing adjustments have received publicity. As a result, taxpayers should pay careful attention to Japan's transfer pricing environment.

Statutory rules and other regulations

Japan enacted formal transfer pricing legislation in April 1986 with the Act on Special Measures Concerning Taxation (ASMT) Article 66-4, and since 2005, Article 68-88 for consolidated companies (collectively, Articles 66-4 and 68-88 of the ASMT). In support of Articles 66-4 and 68-88 of the ASMT, related cabinet orders and ministerial ordinances were issued through the Order for Enforcement of the Act on Special Measures Concerning Taxation Article 39-12 (since 2005, Article 39-112 for consolidated companies; collectively Articles 39-12 and 39-112 of the Cabinet Order of the ASMT) and the Ordinance for Enforcement of the Act on Special Measures Concerning Taxation Article 22-10 (since 2005, Article 22-74 for consolidated companies; collectively Articles 22-10 and 22-74 of the Ministerial Ordinance of the ASMT). The National Tax Agency's (NTA) interpretation and guidance for the application of the transfer pricing rules are set out in the related Commissioner's Directives, i.e. Commissioner's Directive on Interpretation of the Act on Special Measures Concerning Taxation (the ASMT Directive) and Commissioner's Directive on the Operation of Transfer Pricing (the TP Directive).

Japan is a member of the Organisation for Economic Co-operation and Development (OECD) and actively participated in drafting the 1995 OECD Guidelines for multinational enterprises (MNEs), including the 2010 revisions. As such, the NTA generally supports the theory and practices set out in the OECD Guidelines, as confirmed by the TP Directive and in amendments to the transfer pricing legislation under the 2011 Tax Reform. In practice, however, the OECD Guidelines are interpreted and implemented within the framework of Japan's own transfer pricing legislation, as well as Japan's unique political and economic context. This localisation of OECD principles has historically created some differences in the implementation of the OECD Guidelines in Japan compared with other jurisdictions, although such differences have lessened over time as a result of Japan's extensive competent authority experiences with other OECD jurisdictions.

Nevertheless, Japan's transfer pricing legislation, consistent with the OECD Guidelines, is based on the arm's-length principle. Put briefly, Articles 66-4 and 68-88 of the ASMT provide that a corporation (or other juridical person) that has conducted the sale or purchase of inventory, rendered services, or engaged in other transactions with a foreign related party, must do so at an arm's-length price. In transactions where the Japanese tax authorities determine that arm's-length principles have not been adhered to for the purposes of corporation tax, the price can be adjusted to approximate a third-party transaction. In this situation, under the legislation, the Japanese tax authorities have broad powers to recalculate the transfer price.

Framework of the transfer pricing legislation

In general terms, the legislation applies to international transactions between a 'juridical person' and an affiliated 'foreign juridical person'. As discussed in more detail later, two juridical persons are affiliated when a juridical person is engaged in a transaction with a foreign juridical person with which it has a special relationship.

Applicability

Foreign transactions

In general, the Japanese authorities do not believe that there is a threat of lost tax revenues in domestic transactions because any shifted income is ultimately taxed in Japan. Consequently, Japan's legislation applies only to foreign affiliated transactions. The rules apply between related corporations, regardless of whether the non-Japanese company is the parent or the subsidiary. However, the rules do not apply to Japan-sourced income of a non-Japanese affiliate, where that income is taxable in Japan due to such affiliate having a permanent establishment in Japan.

Juridical persons

The legislation applies to cross-border transactions between a juridical person and a foreign juridical person. Juridical persons include corporations, corporations in the public interest such as incorporated associations or foundations, and cooperative associations such as agricultural cooperative associations or small-enterprise cooperative associations. The legislation therefore does not apply to partnerships, unincorporated joint ventures, unincorporated associations or individuals. A foreign juridical person is a juridical entity that is established under the laws of a foreign country and does not have its main office in Japan.

The legislation does not specifically refer to partnership transactions. While it is thought that the legislation does not treat corporate partners as related by reason of their partnership interests, it is believed that certain partnership transactions may be covered if the relationship test is met and the transaction is between Japanese and foreign taxpayers.

Definition of affiliated

Juridical persons are deemed to be affiliated when a juridical person is engaged in a transaction with a foreign juridical person with which it has a special relationship. A special relationship is said to exist:

- if they have a 50% or greater common ownership (*see 50% test section*), and
- if another 'special relationship' exists (*see Other special relationship section*).

The 50% test
The 50% test will be met if the taxpayer, who is a juridical person, directly or indirectly owns 50% or more of:

- the total number of issued shares (voting and non-voting) in the other juridical person, and
- the total amount invested in the other juridical person.

Thus, the test will be satisfied in the typical case of a Japanese subsidiary of a foreign parent as well as in the case of a foreign subsidiary of a Japanese parent. Two corporations are deemed to be affiliated in instances where, in a brother-sister group, 50% or more of the issued shares (voting and non-voting) in each of the two corporations are owned by the same party. Under the indirect ownership rules, a corporation is deemed to own the stock held by another corporation if the first corporation owns 50% or more of the issued shares of the second corporation. This ownership can be through one corporation or through several corporations. There are no provisions in the Japanese tax law with respect to partnerships. Each partner, however, is generally deemed to personally hold the assets of the partnership. Accordingly, in the case of stock in a corporation, the number of shares deemed held by each partner is proportionate to the partner's ownership in the partnership. Family attribution rules would also apply in determining whether ownership would meet the 50% test. Thus, in the case of a spouse, any holdings of the spouse are included and, in certain cases, holdings of the spouse's family.

Other special relationship
A special relationship will also exist in situations where the 50% stock ownership test is not met. A special relationship includes situations where:

- 50% or more of the officers of the company are or were employees or officers of the other company (to date no time limit has been specified)
- the representative director of the company is or was an employee or officer of the other company
- a considerable proportion of a company's operating transactions are with the second company (operating transactions are those transactions that are generally related to the corporation's main source of revenue), and
- a considerable proportion of a company's outstanding loans, which are necessary to the company's operations, have been borrowed from or guaranteed by the second company.

Transactions through unaffiliated parties
The Japanese legislation will also apply to transactions entered into with unaffiliated persons in cases where the transactions with the foreign affiliates are conducted through an unaffiliated person (presumably acting as a conduit). This rule is designed to address transactions that take place with an unrelated trading company. Trading companies in Japan play a vital role in facilitating the import and export of goods. They act as an intermediary between the seller and the purchaser of the goods in question. Some commentators believe this provision was necessary because in Japan a substantial portion of the import/export business is conducted through trading companies.

Types of transactions covered

The legislation covers transactions involving the sale or purchase of tangible personal property and other transactions. The legislation was deliberately left quite broad to give the NTA a greater degree of flexibility. The types of transactions falling within the other transactions category include:

- Rents from tangible assets.
- Royalties for the use of and consideration for the sale or purchase of intangible assets.
- Interest on loans or advances.
- Fees for intercompany services.

The legislation sets out detailed rules for transactions involving tangible personal property, and requires the use of equivalent methods for other transactions. It should be noted that the Japanese reporting form (Schedule 17(4) for taxpayers with fiscal years ending on or after 1 April 2009, formerly Schedule 17(3)), which is part of a corporation's annual tax return, includes requests for information regarding these other transactions (*see Tax audit procedure section*).

Methods of arm's-length price determination

The legislation provides that the affiliated juridical persons must conduct their transactions at an arm's-length price. While the legislation does not specifically recognise either a range of arm's-length prices or net profitability as a standard for establishing specific arm's-length prices, the range concept is incorporated in the ASMT Directive and TP Directive. The ASMT Directive provides that no transfer pricing assessment shall be issued if the taxpayer's price or profitability falls within the range earned by several comparable transactions with a high level of comparability. In addition, the TP Directive provides that in determining the arm's-length price for the purpose of issuing an assessment, the average of those transactions may be used if the price/profitability of the tested transaction falls outside the range.

The sale or purchase of inventory

The legislation provides specific methods for determining an appropriate arm's-length price. It provides that the arm's-length price should be determined, in the case of the sale or purchase of inventory, under:

- The comparable uncontrolled price (CUP) method.
- The resale price method.
- The cost plus method.
- The method similar to the above methods.
- The other methods.

Until the 2011 tax reform, only if the CUP, resale price or cost plus methods. could not be used, a method similar to one of them, or other methods prescribed by Articles 39-12 and 39-112 of the Cabinet Order of the ASMT, could be applied. However, under the 2011 tax reform this priority rule was abolished and instead the so-called best method rule was introduced for business years beginning on and after 1 October 2011.

The other methods

Articles 39-12 and 39-112 of the Cabinet Order of the ASMT in effect introduce the profit split method and the transactional net margin method (TNMM) as other methods.

Three types of profit split method are allowed (paragraph 8(i)), i.e. the comparable profit split method, the contribution profit split method and the residual profit split method.

- The comparable profit split method distributes the profit to the parties by reference to the profit split ratio of a comparable transaction between unrelated parties where such information is available.
- The contribution profit split method requires profits to be allocated between enterprises based on factors illustrating the degree to which each party contributed to the realisation of income, such as the amount of expenses incurred or the values of fixed assets used.
- The residual profit split method may be applied when either party to the controlled transaction owns significant intangible assets. In this method, routine profits are first distributed to the respective parties by reference to the information of the uncontrolled transaction without having significant intangible assets. The residual profit is then distributed to the respective parties in proportion to the value, or the costs incurred for the development, of the significant intangible assets that they own.

The TNMM as described in the Articles 39-12 and 39-112 of the Cabinet Order of the ASMT provides three ways by which arm's-length pricing may be determined:

- TNMM by return on sale (paragraph 8(ii)) computes the transfer price in a controlled transaction as the tested party's resale price minus the sum of:
  - the tested party's resale price multiplied by the operating margin of the comparable transaction, and
  - the tested party's selling, general and administrative expenses.
- TNMM by full cost mark-up (paragraph 8(iii)) computes the transfer price in a controlled transaction as the sum of:
  - the tested party's total costs, being the sum of costs of goods sold and selling, general and administrative expenses, and
  - the tested party's total costs multiplied by the full cost mark-up of the comparable transaction, i.e. the ratio of operating profit to total costs of the comparable transaction.

Under paragraph 8(iv), the transfer price in a controlled transaction may also be computed by reference to a method similar to those described under paragraphs 8(i) or 8(iii).

Other transactions

For transactions other than the sale or purchase of inventory (such as rent for the use of tangible property, royalties for the use of or consideration for the sale or purchase of intangible property, services rendered, and interest on loans or advances) the legislation provides that methods equivalent to the CUP, resale price, cost plus method, profit split method and TNMM can be used.

Moreover, for intercompany services, the TP Directive includes specific reference to the treatment of intragroup services, largely as a reiteration of the OECD commentary on intragroup services (Chapter VII, OECD Guidelines). Payment for such services is deductible by the recipient company if the recipient would need to acquire the services from an unrelated party, or perform them itself, if they were not provided by the related party. However, services provided by a parent company in its capacity

as shareholder are not treated as services performed for consideration and are not deductible. This treatment applies equally to both Japanese parent and foreign parent multinational companies. In addition, the TP Directive contains a provision enabling the tax examiners to treat payments for intercompany services that cannot be supported by the Japanese payer as non-deductible donation expenses under the domestic tax legislation, rather than as a matter of transfer pricing under Articles 66-4 and 68-88 of the ASMT. (It is the NTA's position that taxpayers subject to an adjustment to taxable income under the domestic tax legislation are not entitled to relief through mutual agreement procedures even if double taxation occurs as a result.)

The TP Directive also prescribes guidance on the appropriate treatment of Cost Contribution Arrangements (CCAs) and transactions involving intangible property.

Legal cases

Court cases

On 30 October 2008, the first court case on the application of Articles 66-4 and 68-88 of the ASMT was won by the taxpayer on appeal to the Tokyo High Court (the decision at first instance was issued by the Tokyo District Court on 7 December 2007). The basis for the High Court's decision related primarily to the selection of transfer pricing methodology and the issue of comparability. The NTA's use of secret comparables, which was upheld by the Tokyo District Court, was not addressed by the Tokyo High Court (*see Use and availability of comparable information section*). The NTA abandoned its right to appeal the decision of the Tokyo High Court.

Tribunal cases

On 2 February 2010, TDK announced that the National Tax Tribunal had reduced a determination made by the Tokyo Regional Tax Bureau (RTB) against the company in 2006 arising from electronic parts transactions with foreign affiliates in Hong Kong and the Philippines. As it is extremely rare for a taxpayer to succeed in an appeal to the National Tax Tribunal on purely transfer pricing grounds, this result was interesting in itself. In addition, the size of the reduction made by the National Tax Tribunal in favour of TDK was also significant. In fact, it is understood that the National Tax Tribunal reduced the originally assessed amount of 21.3 billion Japanese yen (JPY) by about JPY 14.1 billion.

Burden of proof

The Japanese legal system places the burden of proof in all taxation matters with the government. Transfer pricing examiners consider that this requires them to obtain detailed information regarding comparable transactions, although they also believe that generally such information cannot be disclosed to a taxpayer, as this is prohibited by taxpayer confidentiality requirements. This situation gives rise to the issue of so-called secret comparables (*see Use and availability of comparable information section*). In practice, in any audit, the taxpayer has a clear burden under the legislation to provide information and, in any case, as a matter of examination management strategy, it could be potentially disadvantageous to withhold information.

Tax audit procedures

Companies are required to complete and return an annual corporation tax return. As part of that return, Schedule 17(4) must be completed; this gives details of the taxpayer's foreign affiliated parties and any transactions with those parties, including disclosure of the transfer pricing methodology adopted for each transaction. A review

of this form, in conjunction with the company's financial statements and a review of the company's results, may lead the tax authorities to select a company for audit.

Within the context of this review, the NTA is likely to be alerted to the possibility of transfer pricing issues in cases where:

- the volume of transactions with affiliated foreign companies is notably large
- intercompany prices, commission paid, and royalty rates charged are set but later changed so that related foreign parties receive advantages or benefits
- a company's profit does not increase in proportion to expansion in the market for its principal product or is not in proportion to the taxable income of comparable companies
- losses are made on the sale of products purchased from affiliated foreign companies
- affiliated foreign companies are making profits that do not reflect the functions they perform
- the functions performed by affiliated foreign companies are not clearly identified
- the basis on which royalty rates have been calculated is not identified, and
- the basis on which income is allocated between the company and affiliated foreign parties appears to be unreasonable.

The likelihood of a transfer pricing audit is the same for domestic or for foreign-owned companies.

The audit procedure

Once a transfer pricing issue has been identified, specialist examiners from the appropriate RTB or tax office visit the taxpayer's premises to conduct an investigation.

The tax authorities are entitled to request any information they consider necessary to determine the appropriate transfer price.

A list of documents that may be requested to be presented or submitted during a transfer pricing audit was incorporated into the Japanese transfer pricing legislation as part of the 31 March 2010 legislative revisions (under the 2010 Tax Reform). Two categories of documents are now required to be presented or submitted during a transfer pricing audit. These are:

- Documents providing details of the taxpayer's foreign affiliated transactions.
- Documents used by the taxpayer for the calculation of arm's-length prices.

Prior to this amendment, there was no explanation of what documents were required to be presented or submitted during an audit under the Japanese legislation (although a similar list of documentation was contained in the TP Directive). Now, a more detailed list of the documents contained in each category is formally provided in Articles 22-10 and 22-74 of the Ministerial Ordinance of the ASMT. Among others, these include the books of account, records and other documents, not only of the taxpayer but also of the foreign affiliate. As to requests for overseas information, the taxpayer is required to endeavour to meet such requests.

In an audit, if a taxpayer fails to present or submit the documents requested (including overseas information that is recognised to be necessary to determine an arm's-length price) within a reasonable period of time, the tax examiners may exercise their power

to use secret comparables (*see Use and availability of comparable information section*) or to conduct taxation by estimation. Taxation by estimation allows the tax examiners to estimate transfer prices without reference to the taxpayer's own transfer pricing method (including based on transactions between affiliated parties, so in theory not at arm's length). In addition, the authorities may estimate taxable income to the Japanese company on its cross-border transaction with a foreign affiliate by applying one of certain prescribed methods. The prescribed methods include either the resale price method, the cost plus method, or a profit split method using a high-level global profit split (i.e. based on an allocation of the total consolidated operating margin of the entire group to which the taxpayer belongs, as disclosed in the group's annual report, assuming that a segmented consolidated operating margin including the transactions under audit is not provided in the annual report). However, taxation by estimation is a last resort for the tax authorities, and to date there has reportedly been only one case where it has been applied.

In addition, in order to provide clarification of the factors that should be taken into account when examiners are investigating the negotiation of transfer prices between affiliated parties, TP Directive also highlights the facts that:

- taxpayers may in fact use arm's-length principles to determine their transfer prices, in order to properly assess both their own financial performance for the business relating to the intercompany transactions, and that of their affiliated party, and
- in some cases, such as joint ventures, third parties (i.e. shareholders of a joint venture) may be involved in the negotiation of transfer prices between two affiliated parties, taking into account arm's-length principles.

The 22 June 2010 amendment goes on to specify that the tax authorities should consider not only the profitability of the two affiliated parties engaged in any intercompany transaction, but also the above-noted negotiation procedures conducted in deriving the transfer price for that intercompany transaction. That is, where a transaction is conducted between a taxpayer and a joint venture owned equally by that taxpayer and a third party, the transaction is subject to the Japanese transfer pricing legislation; however, if the transfer price for that transaction is determined by negotiation with the third-party investor taking into account arm's-length principles, the transfer price may well be accepted as being at arm's length.

Recourse options

There are three domestic methods and one bilateral method of recourse for tax relief available to taxpayers upon receiving a notice of assessment:

- Domestic recourse:
  - Request for reinvestigation to the applicable RTB.
  - Request for reconsideration to the National Tax Tribunal.
  - Litigation.
- Bilateral recourse under the Japan/Treaty Partner Nation Tax Convention (competent authority negotiations or arbitration).

Additional tax and penalties

Interest is charged on unpaid tax at the lower of 7.3% per annum or the sum of the basic discount rate and basic loan rate (previously known as the official discount rate) as of 30 November of the previous year (0.30% as of 30 November 2011), plus 4% (i.e.

total of 4.30% for interest accruing in 2012) for one year after the due date for filing, and for the period from the issuance of the notice of assessment until the date on which the additional tax is actually paid. The interest rate increases to 14.6% if unpaid tax is not subsequently paid within three months of the date that a notice of assessment is issued. This is statutory interest and is not deductible for corporation tax purposes.

There is an automatic penalty of 10% of additionally assessed taxes, plus 5% of additionally assessed taxes exceeding the amount higher of taxes originally reported or JPY 500,000. However, a 35% penalty is imposed on understatements where deliberate tax evasion is judged to have taken place. These penalties are not deductible for corporation tax purposes.

Effective 1 April 2007, in the event that a taxpayer files a request for mutual agreement procedures following a transfer pricing assessment, payment of national tax and penalties pertaining to the assessment can be deferred until the completion of mutual agreement procedures (one month after the day following the date of reassessment based on mutual agreement, or should agreement not be reached, one month from the day following the notification of this fact to the taxpayer), if requested by the taxpayer. In addition, the taxpayer is exempted from delinquent tax for the deferral period. The taxpayer, however, needs to provide collateral for the amount of taxes to be deferred. (The same deferral system for local taxes was introduced in 2008.)

Resources available to the tax authorities

Tokyo, Osaka, and several other RTBs each have a team of specialist transfer pricing examiners who conduct investigations. Over the past several years, the NTA has increased its transfer pricing enforcement by monitoring and expanding the scope of its examinations. The NTA has been increasing the number of examiner positions and the number of offices to be used to investigate transfer pricing strategies in order to handle the increase in the number of transfer pricing cases and APA (*see Advance pricing agreements section*) requests. Additionally, the NTA is educating its staff to identify red-flag issues to consider when auditing corporations that are operating in Japan. As the NTA has become tougher, more experienced and sophisticated in transfer pricing, it has made some very large assessments against a number of companies in various industries, including the pharmaceutical and medical equipment industries.

Use and availability of comparable information

The Japanese tax authorities' very strict compliance with the legislation leads the auditors to review transfer pricing on an individual transaction basis (or product line basis or business segment basis), with a strong focus on the profitability of both affiliates involved in a transaction. While the TP Directive issued by the NTA refers to the operating profit margin in the context of an irregularity check, the NTA's and RTB's historical preference for profit split analyses remains unchanged where such is used either as a transfer pricing methodology itself or as a reasonableness check of the method used by the taxpayer, depending on the situation. However, when it is not possible to conduct a profit split analysis because of a lack of financial data about the foreign affiliate, the examiners generally revert to gross or operating profit margins to establish arm's-length prices.

Given the tax authorities' practice of reviewing transfer prices on an individual transaction basis, they place heavy reliance on comparable transactions. In the past, these were external uncontrolled comparable transactions obtained by reverse audit

of the taxpayer's competitors (i.e. secret comparables). However, the use of secret comparables is very restricted these days. The TP Directive requires examiners to provide the taxpayer with an explanation of conditions of selection of the secret comparables, the content of the comparable transactions, and the method of adjustment for any differences between those transactions and the taxpayer. However, the scope of such explanation is restricted by a confidentiality requirement placed on examiners, and thus the identity of the secret comparables remains undisclosed and can create major difficulties at audit.

Limitation of double taxation and competent authority negotiations/arbitration

All tax treaties concluded by Japan contain a provision for competent authority negotiations. The Deputy Commissioner (International Affairs) of the NTA, who head the NTA's Office of International Operations and Office of Mutual Agreement Procedures, are in charge of competent authority negotiations. Since mid-2010, tax treaties concluded by Japan have also contained provisions for arbitration, where competent authority negotiations are not concluded within a two-year period.

If competent authority negotiations or arbitration result in the Japanese authorities having to cancel a portion of a proposed transfer pricing adjustment, the RTB will reduce the amount of tax due accordingly (i.e. the taxpayer does not need to file for a reassessment of tax). Such reductions will have a corresponding effect on the amount of local taxes due, since municipal and prefectural taxes are based on the amount of corporation tax paid.

As of 30 June 2011, there were 357 ongoing cases under competent authority negotiation (for both transfer pricing assessment and APA cases) and it is anticipated that the number of cases will continue to increase. One of the major reasons for difficulties in competent authority negotiations is the difference in tax policies relating to the methodology that should be used in determining an appropriate arm's-length price. For example, as was evident in the bilateral US-Japan APA reportedly obtained by Komatsu, Ltd., it is understood the US IRS preferred to use the comparable profits method (CPM) while the NTA preferred to use a profit split method, especially given a Japanese multinational was involved.

No cases have been taken to arbitration in Japan as yet.

Advance pricing agreements (APAs)

The original Japanese APA system was called the pre-confirmation system (PCS) and was instituted in April 1987, immediately following the introduction of transfer pricing legislation. Japan was one of the first countries to introduce such a system solely for transfer pricing purposes.

A significant body of APA experience has developed since then, and in October 1999, the NTA issued a formal directive on APA procedures, which in large measure brought existing practice onto a more formal basis. That directive has since been integrated into the TP Directive.

Under the TP Directive, there is a strong expectation that an APA will be bilateral. Under an APA, a taxpayer submits its transfer pricing methodology to be used to determine the arm's-length price and its specific content (together, the TPM) to the

relevant RTB. The RTB will evaluate the TPM and, if appropriate, confirm it or suggest changes. As part of this process, if the APA is bilateral, coordination through the NTA's Office of Mutual Agreement Procedures will arrive at competent authority agreement. Once a TPM is agreed upon (as long as tax returns comply with the agreed TPM), pricing is regarded by the RTB as arm's length. In principle, the period to be covered by an APA is three to five years.

The TP Directive recognises pre-filing conferences as an important part of the APA process. In addition, the formal filing requires a body of detailed supporting documentation, including a functional analysis, details of the transfer pricing methodology applied for, standalone financial statements of the taxpayer as well as its foreign affiliate that is party to the transaction subject to the APA application, and an explanation of the material business and economic conditions assumed. An amendment (effective 25 June 2007) to the TP Directive also strengthened the wording of the application requirements. As a result, the inclusion of the standalone financial statement of the foreign affiliate into the APA application is a strict requirement to be adhered by the taxpayer, and non-submission may result in the RTB's refusal to process the APA application. Moreover, the same amendment also provides that an APA application may not be processed if it results in profit in Japan being reduced without reasonable economic grounds.

An APA application will not stop an ongoing transfer pricing audit; although there is specific clarification that roll-back – the use of an agreed TPM for periods prior to an APA being in force – may be acceptable for bilateral or multilateral APAs. There is also guidance relating to post year-end adjustments to conform to a TPM.

Between 1987 and 1992, few PCS cases were filed and only a handful of these were approved. Since 1992, however, transfer pricing legislation around the world (particularly in the United States) has developed considerably. In response to this, the NTA has taken an even more proactive attitude towards the bilateral APA procedures. Between 30 June 1999 and 30 June 2011, some 1,054 bilateral APA applications had been filed, with more than 784 APAs completed during the same period. In addition, the number of APA examiners at the Tokyo RTB has continued to increase, from 27 in 2007 to 58 in 2011. Examples of reported APAs include:

- Apple Computer Japan, Inc. was the first foreign parent company to obtain a bilateral APA with the NTA and IRS. It was reported that the profit ratios from domestic sales of Apple's personal computers were to be based on ratios that were mutually agreed to by the NTA and the IRS.
- Matsushita Electric Industrial Co. became the first Japanese-parent taxpayer to obtain an APA that was mutually agreed by the NTA and IRS.

OECD issues

Japan is a member of the OECD.