



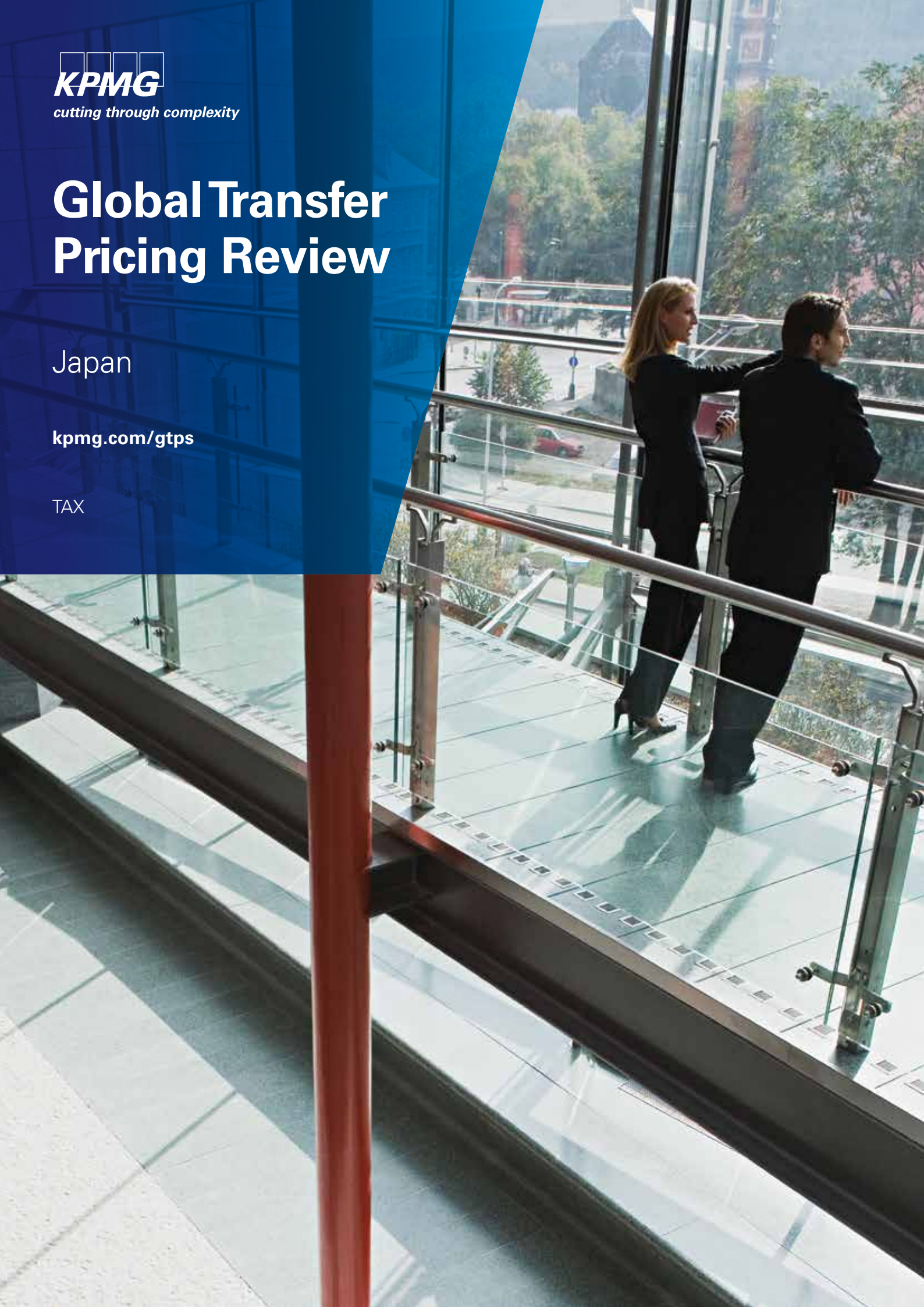
cutting through complexity

Global Transfer Pricing Review

Japan

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TAX



Japan

KPMG observation

Transfer pricing is, and has been, a key focus of the Japanese tax authorities.

The 2011 Tax Reform, in particular, was noteworthy for taxpayers, as it was comprehensive and tried to follow the 2010 Organisation for Economic Co-operation and Development (OECD) Guidelines. It introduced several important concepts, such as the most appropriate method rule, arm's length range, secret comparables, and clarified use of profit split methods.

The 2012 Tax Reform did not include major changes in transfer pricing areas, although it had some important changes in tax investigation procedures in general that have had quite an impact on transfer pricing examinations.

The tax code has not been drastically changed in terms of transfer pricing since 2013, however, KPMG in Japan expects that the tax code will be changed and ratified around March 2016 according to reflect the OECD Base Erosion and Profit Shifting (BEPS) initiative.

Transfer pricing study snapshot

The purpose of a transfer pricing study

| | Applicable | Not applicable | Submission to tax authority required |
|---------------------------|------------|----------------|--------------------------------------|
| Legal requirements | | | ● |
| Protection from penalties | | ● | |
| Reduce risk of adjustment | ● | | |
| Shifts burden of proof | | ● | |

Basic information

Tax authority name

Kokuzei-cho; National Tax Agency (NTA).

Citation for transfer pricing rules

Special Taxation Measures Law, Article 66-4 and Enforcement Cabinet Order of Special Taxation Measures Law, Article 39-12.

Effective date of transfer pricing rules

1 April 1986, in general.

What is the relationship threshold for transfer pricing rules to apply between parties?

Ownership of 50 percent or greater.

What is the statute of limitations on assessment of transfer pricing adjustments?

Six years after the fiscal year-end in principle but details are complicated.

Transfer pricing disclosure overview

Are disclosures related to transfer pricing required to be submitted to the revenue authority on an annual basis (e.g. with the tax return)?

Yes. Some information relating to companies' related party transactions are required to be submitted with the tax return.

What types of transfer pricing information must be disclosed?

One must disclose the nature of the transaction and name of the counterparties, the selected transfer pricing methods, the amounts of the transactions, and whether any transactions are subject to an Advance Pricing Agreement (APA). This information is required on specific forms within the tax return.

What are the consequences of failure to submit disclosures?

Nothing specifically mentioned in the regulations.

Transfer pricing study overview

Can documentation be filed in a language other than the local language? If yes, which ones?

No.

When a transfer pricing study is prepared, should its content follow Chapter V of the Organisation for Economic Co-operation and Development (OECD) Guidelines?

Yes, with some exceptions. Specific documents required are listed under Special Taxation Measures Law (STML) Enforcement Regulations Order, Article 22–10, but major elements include company overview, description on intra-group transactions, functional and risk analysis, industry analysis, selection of method, description of comparables, and, economic analysis.

Does the tax authority require an advisor/tax practitioner to have specific designation in order to prepare or submit a transfer pricing study?

No.

Transfer pricing methods

Does your country follow the transfer pricing methods outlined in Chapter II of the OECD Guidelines? If exceptions apply, please describe.

Yes, with some exceptions. Use of the so-called 'other method', even in cases where there is no other choice, has no clear authority in the Japanese regulations.

Transfer pricing audit and penalties

When the tax authority requests a taxpayer's transfer pricing documentation, are there timing requirements for a taxpayer to submit its documentation? And if so, how many days?

No.

When the tax authority requests a taxpayer's transfer pricing documentation, are there timing requirements for a taxpayer to submit its documentation? Please explain.

No specific rule, but documentation has to be submitted on a timely manner after the request, possibly within 30 days or so.

If an adjustment is proposed by the tax authority, what dispute resolution options are available?

Domestic administrative protest procedures available to the taxpayer include a request for reinvestigation followed by a request for reconsideration and appeal at district court level.

If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?

Yes, general tax penalties for underpayment only, 10 to 15 percent of incremental amount of tax assessed.

To what extent are transfer pricing penalties enforced?

There is no transfer pricing specific penalty, if the taxpayer received a transfer pricing assessment, penalties are imposed in the same manner with general corporate tax audit.

What defenses are available with respect to penalties?

Not applicable.

What trends are being observed currently?

More and more audits are focused on intangible and intra-group service transactions as well as transactions within Asia. The number of cases has steadily increased and the amount of assessment per case may be decreasing.

Special considerations

Are secret comparables used by tax authorities?

In very limited cases. If used, they have reduced evidence value in court.

Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?

Yes. It is usually not acceptable to omit Japanese comparables where the Japanese entity is the tested party.

Do tax authorities have requirements or preferences regarding databases for comparables?

They have access to ORBIS, Compustat and others, but they have no special preferences.

Does the tax authority generally focus on the interquartile range in a TNMM analysis?

Yes, always.

Does the tax authority have other preferences in benchmarking? If so, please describe.

Not applicable.

What level of interaction do tax authorities have with customs authorities?

Very Low.

Are there limitations on deductibility of management fees beyond the arm's length principle?

No, if they are arm's length.

Are management fees subject to withholding?

No.

Are there limitations on the deductibility of royalties beyond the arm's length principle?

No, it is deductible as long as the royalty is arm's length.

Are royalties subject to withholding?

Yes.

Are taxpayers allowed to file tax return numbers that differ from book numbers?

Yes, but it should be carefully executed. It has to be pre-agreed and clearly show a change of transfer prices (not transfer of profit).

Other unique attributes?

None.

Tax treaty/double tax resolution

What is the extent of the double tax treaty network?

Extensive.

If extensive, is the competent authority effective in obtaining double tax relief?

Frequently.

When may a taxpayer submit an adjustment to competent authority?

Where double taxation occurs, or the possibility of occurrence of double taxation is very high. In practice, an adjustment to competent authority is submitted after an assessment is issued.

May a taxpayer go to competent authority before paying tax?

Taxpayers can request a grace period under certain conditions.

Advance pricing agreements

What APA options are available, if any?

Unilateral, bilateral.

Is there a filing fee for APAs?

No.

Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums?

Yes.

Are there any difficulties or limitations on the availability or effectiveness of APAs?

No. Very successful.

KPMG in Japan

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