

# Transfer Pricing - Japan

## 1. History

- (1) TP provision for international transactions enacted as Article 66-5 (now Article 66-4) of the Special Taxation Measures Law (“STML”) in 1986**
- (2) APA created by a circular in 1987**
- (3) TPMs were initially CUP, CP, RS & PS  
TNMM introduced in 2004**
- (4) Modified RS method was used instead of TNMM**

## **2. Organization**

**Tokyo Regional Taxation Bureau (“TRTB”) and Osaka Regional Taxation Bureau (“ORTB”)**

**First Large Enterprise Examination Department**

**Transfer Pricing Division**

**Advance Pricing Arrangement Division**

**Review Division**

**The other ten Regional Taxation Bureaus do not have divisions specifically assigned to transfer pricing. They have the international tax division which handle transfer pricing as one of their duties.**

### 3. TPMs

<p><b>Inventory asset sales transactions</b></p>	<p><b>Transactions other than inventory asset sales transactions (sale or lease of immovables, transfer or licensing of intangibles, provision of services, loans or other financial transactions, etc.)</b></p>
<p>Three basic methods:  CUP method  RP method  CP method</p>	<p>Methods equivalent to the three basic methods:  Methods equivalent to the CUP method  Methods equivalent to the RP method  Methods equivalent to the CP method</p>
<p>Methods similar to the three basic methods   Methods similar to the CUP method  Methods similar to the RP method  Methods similar to the CP method</p>	<p>Methods equivalent to methods similar to the three basic methods:  Method equivalent to methods similar to the CUP method  Method equivalent to methods similar to RP method  Method equivalent to methods similar to the CP method</p>
<p>Other methods prescribed in the Cabinet Order  (a) TNMM  (b) Methods similar to the TNMM  (c) PS method  (i) Comparable PS method  (ii) Residual PS method  (iii) Contributory PS method</p>	<p>Methods equivalent to other methods prescribed by Cabinet Order  (a) Method equivalent to the TNMM  (b) Method equivalent to methods similar to the TNMM  (c) Method equivalent to PS method  (i) Method equivalent to the comparable PS method  (ii) Method equivalent to the residual PS method  (iii) Method equivalent to the contributory PS method</p>

Note: Traditional transaction methods (called basic methods in Japan) lost priority in 2011 corresponding to the same change in the OECD TP Guidelines in 2010

## **4. Four Court Cases**

### **(1) Imabari Zosen Case:**

**Takamatsu High Court Judgment of 13 October 2006**

### **(2) Thai Baht Loan Case:**

**Tokyo District Court Judgment of 26 October 2006**

### **(3) Nippon Acchaku Tanshi Case:**

**Osaka District Court Judgment of 11 July 2008**

### **(4) Adobe Case:**

**Tokyo High Court Judgment of 30 October 2008**

## **5. Japanese Features**

### **(1) Secret Comparables**

#### **(2) High Ratio of Use of TPMIM**

#### **(3) No Contemporaneous Documentation**

##### **(a) Separate Schedule 17(4)**

##### **(b) Presumptive Taxation Based on Secret Comparables (STML Art. 66-4(6))**

##### **(c) Third Party Examination (STML Art. 66-4(8))**

#### **(4) Tax Authorities' Investigatory Power Over Documents Located Outside Japan**

#### **(5) Penalty Tax**

##### **(a) Penalty for Understatement**

###### **(i) 10% of the additionally imposed tax liability**

###### **(ii) 15% for the portion exceeding twice the prior tax liability or JPY500,000, whichever is greater.**

##### **(b) Delinquency Tax**

###### **4.3% p.a. (Central Bank's lending interest rate + 4%)**

#### **(6) Statute of Limitations 6 years**

SCHEDULE 17(4) Particulars concerning Foreign Related Persons

	Name	Business Year or Consolidated Business Year		Corporation's Name	
		Item No. _____	Item No. _____		Item No. _____
Name, etc. of Foreign Related Persons	Name				
	Head or Main Office				
	Principal Businesses				
	Number of Employees				
	Capital or Equity Amount				
	Classification of Special Relationship	Hold	Item No. _____ %	Item No. _____ %	Item No. _____ %
		Hold	%	%	%
	Percentage of Share Holding	Shares of Foreign Related Person Held by Same Person	%	%	%
		Business Year	From: _____ To: _____	From: _____ To: _____	From: _____ To: _____
	Operating Revenues, etc. in the Most Recent Business Year	Operating Revenues or Sales	Cost of Goods Sold		
			Operating Expenses		
	Operating Profit	Operating Profit			
		Net Profit before Tax			
	Price of Inventory Assets Sold or Purchased	Received	mil.yen	mil.yen	mil.yen
		Payment	mil.yen	mil.yen	mil.yen
Price of Services Provided	Calculation Method	mil.yen	mil.yen	mil.yen	
	Receipt	mil.yen	mil.yen	mil.yen	
Rentals of Tangible Fixed Assets	Payment	mil.yen	mil.yen	mil.yen	
	Calculation Method	mil.yen	mil.yen	mil.yen	
Royalties of Intangible Fixed Assets	Receipt	mil.yen	mil.yen	mil.yen	
	Payment	mil.yen	mil.yen	mil.yen	
Interest of Loan(s) or Borrowing(s)	Calculation Method	mil.yen	mil.yen	mil.yen	
	Receipt	mil.yen	mil.yen	mil.yen	
	Payment	mil.yen	mil.yen	mil.yen	
	Calculation Method	mil.yen	mil.yen	mil.yen	
	Receipt				
	Payment				
	Calculation Method				
	Receipt				
	Payment				
	Calculation Method				
Existence of APA					
		Yes • No	Yes • No	Yes • No	

Status, etc. of Transactions with Foreign Related Persons

## 6. Dispute Resolution

### (1) Administrative Appeals

(a) Request for Reexamination  
(Regional Taxation Bureau)

(b) Request for Reconsideration  
(National Tax Tribunal)

### (2) Litigation after Administrative Appeal(s)

### (3) Mutual Agreement Procedure (“MAP”)

Administrative year		APA	Transfer Pricing Taxation	Others	Total
2007	accrued	113	31	9	153
	disposed	82	33	10	125
	carryover	222	57	25	304
2008	accrued	130	30	14	174
	disposed	91	23	13	127
	carryover	261	64	26	351
2009	accrued	149	27	7	183
	disposed	105	33	16	154
	carryover	305	58	17	380

### (4) Arbitration as a Part of MAP in Tax Treaties with the Netherlands and Hong Kong

## **7. APA**

- (1) APA is popular as a way to avoid TP taxation.**
- (2) Documents (other than factual documents such as financial statements, capital relationship diagrams and summary statements of business) received from a corporate taxpayer as part of an APA procedure may not be used for tax examination purposes.**
- (3) While an APA is in progress, no tax examination of transfer pricing issues will be conducted for the tax years to be covered by the APA application (including the roll back years).**



## **8. APA Procedure**

- (1) Bilateral, unilateral and multilateral APAs are available but the bilateral APAs are more utilized.**
- (2) APA application must be filed before the 1st day of the tax year to be covered by the APA.**
- (3) APA period is 3 to 5 years. The roll back years are permitted in bilateral APAs.**
- (4) The review of an bilateral APA application is conducted by a Regional Taxation Bureau before the MAP therefor is started.**

### **(5) Typical critical assumption**

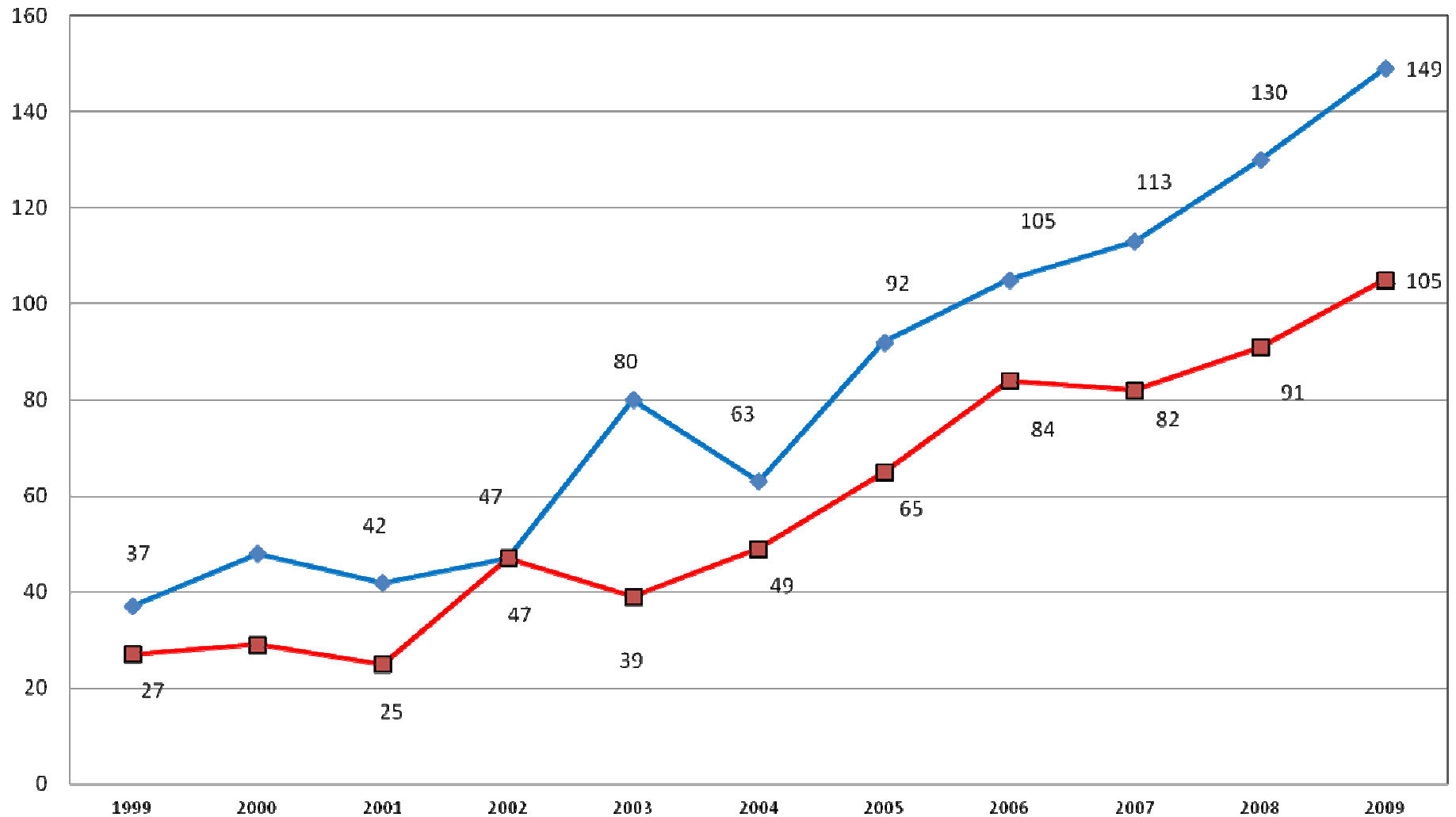
**The business activities, functions performed, risks assumed, assets employed, financial and tax accounting methods, and business circumstances of (the Japanese applicant) and (the foreign related person) in relation to the covered transactions will remain materially the same as described or used in the APA request. A mere change in business results will not be a material change.**

### **(6) Compensating adjustment**

**If the actual profit level deviates from the target profit range, a compensating adjustment will be made to the nearest edge of the target profit range. A compensating adjustment may be made for any individual business year during the term of the APA, or in the last business year for its entire term.**

### **(7) Annual APA report**

## 9. Number of APA applications made and number of APAs concluded by administrative year



**Note: The 2009 administrative year is from 1 July, 2009 to 30 June of 2010.**

## **10. The Changes in 2011**

- (1) Three Basic Methods have lost priority and the most appropriate method is adopted.**
- (2) Comparative Profit Split Method is clearly provided for in tax law in addition to the Residual PS and Contributory PS.**

# **Transfer Pricing – China (1)**

## **1. The TP Taxation System introduced in 1991**

## **2. Definition of Related Person**

**(1) 25% or more of direct or indirect share ownership**

**(2) Substantial control through loans, personnel, technology, purchases or sales, or other substantial control over manufacturing and management, or being in the positions of enjoying common economic interest.**

## **3. TPMs**

**(1) CUP method**

**(2) RP method**

**(3) CP method**

**(4) TNMM**

**(5) PS method**

**(6) Other methods consistent with the arm's length principle**

**No priority among the above methods**

# **Transfer Pricing – China (2)**

## **4. Comparability**

- (1) Characteristics of Property or Services**
- (2) Functions and Risks of the Parties**
- (3) Contractual Terms**
- (4) Economic Circumstances**
- (5) Business Strategies**

## **5. Contemporaneous Documentation**

**(1) Corporate taxpayer is required to prepare, keep and submit to the SAT the contemporaneous documentation.**

**(a) The preparation is by May 31 of next year after the tax year during which the transactions in question took place.**

**(b) The documentation must be kept for 10 years.**

**(c) The submission to the SAT is within 20 days after the request of submission.**

**(2) The contemporaneous documentation is required to consist of the five chapters of (i) organization, (ii) production and management, (iii) related transactions, (iv) comparability analysis and (v) adoption and use of transfer pricing method.**

# Transfer Pricing – China (3)

## APA

(1) Introduced in 1998

(2) Kinds

unilateral, bilateral and multilateral APAs

(3) Requirements

(i) Annual transaction amount is 40 million RMB or more

(ii) Has performed tax return obligation according to law

(iii) Has complied with the contemporaneous documentation requirement

(4) APA period

From 3 to 5 years

Roll back years are permitted.

(5) Procedure

(i) Pre-filing conference

(ii) Official application

Within 3 months after receipt of the notice from SAT but before the 1st day of the first tax year during the APA period

(iii) Review

Within 5 months after receipt of the official application, extendable for another 3 months

(iv) Negotiation

(v) Conclusion

(vi) Annual report

Within 5 months after the end of a tax year

(vii) Renewal

To be applied at least 90 days before the expiration

# Transfer Pricing – China (4)

## 7. Current Status

- (1) Six officials in charge of MAP in the Anti Tax Avoidance Department of the SAT**
- (2) 25 agreements under MAP for the corresponding adjustments of TP taxation (16 with Japan, 6 with South Korea)**
- (3) 20 bilateral APAs concluded (8 with Japan, 7 with South Korea)**
- (4) Approximately 120 APA applications are under review.  
(The USA, Japan, South Korea, Singapore, Denmark, Switzerland, Germany, Italy, Sweden, Australia, etc.)**

**Thank you very much.**