

# Japan Tax Bulletin

## Taxable enterprises under Consumption Tax Law

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### 1. Taxable person

Persons who transfer taxable assets in Japan or import foreign cargo from bonded areas are required to file a consumption tax return and pay consumption tax to the government (Article 5 of Consumption Tax Law (“CTL”). However, persons are exempt from filing a consumption tax return and paying consumption tax where the amount of taxable sales in the base period is not larger than JPY 10 million (Article 9① of CTL). The base period for a corporate enterprise is the business year two years prior to the current business year (Article 2①(14))<sup>1</sup>. Taxable enterprises are taxable persons who are not exempt from the requirement to file tax returns and make tax payments.

As there are a couple of exceptional rules to the above, it is advisable for an enterprise to pay careful attention to whether or not it is a taxable enterprise.

### 2. Election for taxable status

An exempt enterprise can elect to be a taxable enterprise by filing a notification before the first day of the tax period for which the election for taxable status applies. Once the election has been made, it cannot be cancelled for 2 years from the first day of the tax period for which the election applies (Article 9④, ⑦ of CTL). If an exempt enterprise expects to be in a refund position for consumption tax purposes, it should consider whether filing the election is worthwhile.

### 3. Special rule for an enterprise whose taxable sales in the specified period is JPY 10 million or more

Where the taxable sales of a base period are not larger than JPY 10 million, but the taxable sales in the first 6 months in the prior business year (“specified period”) are larger than JPY 10 million, an enterprise cannot be an exempt enterprise (Article 9-2 ① of CTL). The taxable sales in the specified period can be replaced by salary amount paid in the specified period.

### 4. Special rule for a newly incorporated company with JPY 10 million or more of stated capital (shibonkin)

When a company is incorporated, as there are no base periods for the first two tax periods, the company is usually an exempt enterprise. However, where the stated capital of the company is JPY 10 million or more, the company is a taxable enterprise for tax periods for which no base period exists (Article 12-2 ① of CTL).

### 5. Special rule for a specified newly incorporated company

A further test exists for newly incorporated companies. Even if its stated capital is less than JPY 10 million, if a company qualifies as a “specified newly set-up company”, the company will be a taxable enterprise for tax periods for which no base period exists (Article 12-3 of CTL).

A “specified newly set-up company” is one where the following conditions are satisfied:

- A newly set-up company is controlled by other persons with 50% or more of direct or indirect ownership, on the first day of a business year for which a base period does not exist; and
- The taxable sales of any other person included in applying the ownership test above, in the base period of the newly set-up company, are more than JPY 500 million.

### 6. Special rule for the taxable purchase of certain fixed assets

Where a newly set-up company with stated capital of JPY 10 million or more or a specified newly set-up company, makes the taxable purchase of certain fixed assets in a tax period for which a base period does not exist, the company cannot be an exempt enterprise for 3 years from the first day of the tax period when the taxable purchases were made (Article 12-2②, 12-3③ of CTL).

This rule also applies to an enterprise that has elected for taxable status. If such an enterprise makes taxable purchases of certain fixed assets within 2 years from the first day of the tax period when the enterprise became a taxable enterprise, the enterprise cannot be an exempt enterprise for 3 years from the first day of the tax period when the taxable purchases were made (Article 9⑦).

<sup>1</sup> Where the business year two years prior to the current business year is less than 12 months, the base period includes business years beginning from (1) one day prior to the day two years prior to the first day of the current year to (2) the day one year from (1).

Certain fixed assets includes buildings, leasehold improvements, structures, machinery, vessels, aircraft, automobiles, tools, equipment, mining rights, and other assets where the price per unit is JPY 1 million or more. Inventories are not included in the category.

This rule does not apply to taxable enterprises that have elected to use the simplified taxation method<sup>2</sup>.

*7. Special rule for the taxable purchase of specified expensive assets*

Where a taxable enterprise makes the taxable purchase of specified expensive assets, the enterprise cannot be an exempt enterprise for 3 years from the first day of the tax period following the tax period during which the enterprise made the purchase of the specified expensive assets (Article 12-4① of CTL).

Specified expensive assets are inventories or fixed assets discussed in 6 above, where the price per unit is JPY 10 million or more.

This rule does not apply to taxable enterprises that have elected to use the simplified taxation method.

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<sup>2</sup> A taxable enterprise whose taxable sales in base period are not larger than JPY 50 million can elect to use the simplified taxation method. Under the simplified taxation method, the input tax deduction amount is calculated by taxable sales x deemed purchase ratio x tax rate. The deemed purchase ratio is 40% - 90% depending on the type of the business the company is engaged in.

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