

# Japan Tax Bulletin

## November 27, 2019 Tokyo High Court Decision about Tax Residency

**April 2022**

### 1. Tax residency under Income Tax Law

A tax resident is defined as a person who has (1) domicile or (2) a house for continuously 1 year or more in a place where the Income Tax Law is enforced. Domicile is a person's centre of living as defined by Article 22 of the Civil Code. A person who satisfies one of the following conditions is deemed to have a domicile in Japan:

- i. They have an occupation which ordinarily requires them to reside continuously for 1 year or more in Japan; or
- ii. They have Japanese nationality and there are facts that indicate that they reside in Japan for one year or more with reference to their occupation, spouse or other family members in Japan who share a household with the person. A spouse or other family members who are dependents of a person who is presumed to have domicile in Japan are also presumed to have domicile in Japan if they reside in Japan.

### 2. Facts

X is an individual who is the representative director of two Japanese companies and CEO of related companies in Indonesia, Singapore, USA and China. X traveled between these countries. The number of days X spent in each country is as follows:

	2004	2005	2006	2007	2008	2009	2010	2011	2012
Japan	148	111	226	99	95	93	105	83	125
USA	97	105	79	118	111	97	87	104	78
Singapore	29	104	28	68	70	82	70	90	68
Indonesia	43	29	6	13	27	30	32	30	38
China	21	9	18	43	30	56	43	40	33
Others	28	7	8	24	33	7	28	28	26
Total	366	365	365	365	366	365	365	365	366

While X stayed in Japan, X stayed in a residence in Nagoya city. While he stayed in USA, he stayed in a condominium in the state of California. While he stayed in Singapore, he stayed in a residence that the Singapore company leased.

X had not originally filed any personal income tax returns with the tax office in Japan as he had considered himself to be a non-resident. Under recommendation from the tax office, he filed his personal income tax returns. However, X filed requests to correct his tax returns on the basis that he had been a non-resident. The tax office dismissed his request on the ground that there were no reasons for the requests, and so X filed a lawsuit with the Tokyo District Court requesting the

cancellation of the treatments the tax office had made. X contended that he had been a resident in Singapore while the tax office contended he had been resident in Japan.

### 3. Judgements

The court supported X's position for the following reasons:

- i. The number of days X stayed in each country and physical residence  
Although the number of days he stayed in Japan were greater than those he stayed in Singapore from 2009 through 2012, there were not significant differences between the numbers of days he had stayed in the both countries. It is undeniable that Singapore the base from where X traveled to Indonesia and other countries. As the numbers of days in Indonesia and other countries (excluding Japan, Singapore and US) were 37, 60, 58 and 62 in 2009, 2020, 2011 and 2012 respectively, there were no meaningful differences between the numbers of days X stayed in Japan and those he stayed in Singapore. The comparison of the numbers of days he stayed could not support positively the fact that X's centre of living had been in Japan.

- ii. Occupations of X

X had been representatives of the two Japanese companies and the four foreign related companies. He had solely made management decisions for the foreign related companies. There were many matters he could not delegate to the local managers. X's younger brother was also the representative of the two Japanese companies. The younger brother had mainly made management decisions for the two Japanese companies. X's involvement in the Japanese companies' management had been limited to consultations with the younger brother about important management issues and attendance at monthly management meetings, the board of directors meetings and shareholders' meetings. X had stayed 66%-75% of the years in the foreign countries for business development and factory management for the foreign related companies. As X had stayed approx. 40% of his time in Singapore, Indonesia, China or other counties where he had traveled from, the centre of his business activities was deemed to have been Singapore.

iii. Residence of spouse and other family members who share the same household as X

X's spouse and daughter had continuously stayed in a residence in Japan. X, the spouse and the daughter elected not to move their centre of living to foreign countries but to meet X when he was back in Japan as a lifestyle choice to meet X's occupational activities. The fact that the spouse and other family members who were members of the same household as X had stayed in Japan could not support positively the fact that X's centre of living had been in Japan.

iv. Location of assets

X had owned the shares in the two Japanese companies, joint ownership rights in the residence in Japan, motor vehicles and bank deposits. Many of assets he owned had been in Japan. The fact that X had owned more assets in Japan than in foreign countries could not support positively the fact that X's centre of living had been in Japan.

v. Others

The fact that X had not completed any resident registration exit procedures could not support positively the fact that X's centre of living had been in Japan. The fact that X had been covered by the health insurance of a health insurance association in Japan and had attended hospitals in Japan could not support positively the fact that X's centre of living had been in Japan.

#### 4. *Comments*

The court case was about the tax residency of a person who had traveled to multiple countries for business. The court ruled that domicile is a person's centre of living and whether or not a certain place is a domicile should be determined with reference to whether or not such a place has objectively the substance of being a centre of living. Whether or not a place has objectively the substance of a centre of living should be determined by looking at the overall position with reference to the number of days in a country, residence, occupations, residence of family members who share the same household, location of assets etc. This is the same ruling as in other court rulings. In the ruling, the court respected X's occupational most respected and determined his centre of living had been in Singapore, although his spouse and daughter had resided in Japan and he had owned more assets in Japan than in Singapore. The numbers of days for stay in each country were taken into account in relation to his occupational activities. The court treated the numbers of days in Indonesia and other countries as related to the number days in Singapore where X had traveled there from Singapore.