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在日本投资经营手册

中国海外投资业务部



EY 安永

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¹ 安永日本是安永在日本的成员机构的统称。

在日本设立法人实体



法人实体

日本主要有两类承担有限责任的公司。一类是株式会社（类似股份公司）（*Kabushiki Kaisha*或KK），另一类是合同会社（类似有限责任公司）（*Godō Kaisha*或GK）。KK是小型私营公司和大型上市公司使用最广泛的公司形式。于2006年引进的GK，与美国的有限责任公司（LCC）较相似，适合小型私营公司。从历史来看，KK一直是日本企业的主要选择，但是GK的使用正在增加。

下表显示了 KK 和 GK 的主要法律特征：

	株式会社（KK） （非公开上市股份公司）	合同会社（GK）
所有权与管理分离	是 股东任命董事	否 成员（即股东）直接管理业务
最低资本额	一日元	一日元
股东 / 成员的 有限责任	以出资额为限	以出资额为限，但若履行管理职责的成员未能履行管理企业的职责，该管理成员可能需对第三方承担责任
股东 / 成员最少数量	一名	一名
股权转让	公司章程（articles of incorporation）中可能规定股权转让时，需获得公司批准（具有此类条款的 KK 被称为“非公开 KK”） ²	默认规则是进行任何股权转让，要求获得成员的一致同意
高管 ³	<ul style="list-style-type: none"> 至少任命一名董事，且为自然人 默认规则赋予每名董事代表KK的权力，但他们可以任命一名或多名代表董事 如果KK希望设立董事会，则最少需要任命三名董事，其中至少一名是代表董事 	<ul style="list-style-type: none"> 默认规则赋予每名股东代表 GK 的权力，但股东们可以任命一名或多名代表股东 如果代表股东是法人实体，该股东必须任命一名自然人作为执行官（<i>shokumu shikkosha</i>），并实际执行GK的业务
董事 / 成员任期	最多10年	无限制
董事会 / 股东会	无要求	无要求
法定审计师和 会计审计师	<ul style="list-style-type: none"> 如 KK 有董事会，则需要“法定审计师” 如果法定资本为5亿日元或以上，或总负债为200亿日元或以上，则同时需要法定审计师和会计审计师 	无要求
财务报表的公开披露	必须披露（每年）	无要求

² 除受到公司章程限制以外，KK的股份通常可以自由转让。

³ 自2015年3月起，至少一名日本常驻代表董事 / 股东的规定已废除。

设立步骤

设立KK 或 GK 一般需要三至四周时间。每个案例所需的文件及内容会有所不同。

典型公司设立的关键步骤⁴如下：

	株式会社 (KK)	合同会社 (GK)
1.	(如需要) 通过日本银行 (Bank of Japan) 向有关部门提交一个关于对日直接投资的预先通知并等待批准 ⁵	
2.	倘若发起人 (即初始股东) 为外国法人实体, 需请准备一份在发起人所在国已公证的发起人宣誓书	如果代表股东是外国法人实体, 需准备一份在代表股东所在国已公证的代表股东宣誓书
3.	准备一份已公证的实质控制人身份审核 (KYC审核)、由日本公证员进行公证的已通过的公司章程	通过公司章程 (无需公证)
4.	将资金存入出资人的银行账户 (需为在日本有资质的银行), 最少一日元	将资金存入代表股东的银行账户, 最少一日元
5.	任命一名或多名董事和代表董事 (必要时)	任命代表股东 (如需要)。如果代表股东是法人实体, 则必须指定一名自然人作为实际执行业务的执行官 (<i>shokumu shikkosha</i>)
6.	向日本法律事务部 (司法部) 提交公司注册申请。完成公司注册一般需要一星期	
7.	通过日本银行向有关部门提交一份关于对日直接投资的事后报告	

⁴ 如果传递文件遇到问题或其他, 可以利用其他成立途径。

⁵ 在某些情况下 (特别是新公司运营的业务属于某些受监管业务), 《外汇和外贸法 (Foreign Exchange and Foreign Trade Act)》和 / 或新公司要处理的产品或服务受到出口管制), 必须提供预先通知和清关程序。

外国公司的分公司 (branch)

打算在日本持续开展业务的外国公司必须 (1) 设立子公司 (subsidiary) 或 (2) 申请注册外国公司 (即所谓的分公司 (branch))。区别于子公司, 分公司没有自己的独立的法人地位, 外国公司将对其分公司的活动负有直接法律责任。

为了在日本设立分公司, 外国公司最少需要任命一名个人代表 (必须居住在日本)。该分公司需要在日本法律事务部注册。

设立分公司的关键步骤如下:

1. (如需要) 通过日本银行向有关部门提交关于对日直接投资的预先通知并等待批准⁶
2. 任命一名或多名分公司代表。分公司代表中至少有一人必须居住在日本, 但不要求公民身份
3. 准备外国公司所在国已公证的宣誓书
4. 自任命分公司代表之日起三周内, 在日本法律事务部 (司法部) 登记公司。完成分公司登记一般需要一至二个星期

在提供所需信息后, 完成上述设立分公司的步骤2至4, 一般需要三至四个星期。

分公司可在分公司代表被任命后开设, 但在某些情况下需要预先通知和批准。

分公司可以运营任何业务类别, 除非适用的监管法要求为“任何独立的日本法人实体” (如 KK 或 GK) 进行业务。外国公司的日本分公司在完成分公司登记后, 可以在日本开设银行账户。

在日本有常设机构 (PE) (如: 分公司) 的外国公司对于归属于其常设机构的收入须缴纳日本法人税 (CIT)。

代表处

设立代表处比较容易。然而, 代表处不能从事任何商业交易。其活动仅限于信息收集、市场调查和一般联络活动。

由于代表处不从事任何商业交易, 一般来说, 代表处在日本不被征收法人税 (corporate tax)。不过, 如果外国公司在日本有直接销售行为, 而且其驻日本代表处参与其中, 该代表处将会被看作分公司需在日本纳税。

外国公司可以在日本设立代表处。代表处不需在法律事务部登记。然而, 来自外国的银行、保险公司、证券公司或其他金融机构在日本设立代表处前, 必须向金融服务局提交预先通知。

代表处是其外国总部的延伸, 一般不能开立银行账户或以其名义租赁房地产。

⁶ 在某些情况下 (特别是分公司运营的业务属于某些受监管业务), 《外汇和外贸法 (Foreign Exchange and Foreign Trade Act)》和 / 或新公司要处理的产品或服务受到出口管制, 必须提供预先通知和清关程序。

法人税等和投资相关重点



常设机构（PE）

根据日本税法对常设机构的定义，基本上与经济合作与发展组织（OECD）示范条约近似。

然而，日本有一些税收条约提供了OECD示范条约的基前侵蚀和利润转移（pre-base erosion and profit shifting）版本。

居住地

在日本注册或设有总部的公司被视为常驻公司，并不使用中央管理和控制或有效管理的标准来确定公司的税务居住地。

税收基础

日本对居民公司全球收入征收日本法人税，但从某些子公司获得的股息可免税（请参阅*股息、利息、特许权使用费和资本利得税部分*）。

没有常设机构的非居民公司，当局对归属于日本来源的收入征收法人税。

在日本拥有常设机构的外国公司，当局对归属于常设机构的收入征收日本法人税。外国公司的常设机构被视为与其总部分离和独立的实体，独立交易原则（arm's length principle）适用归属于常设机构的被视为公司间交易产生的收入。



外国税收抵免

日本允许外国直接税（视乎限制）的外国税收抵免。一般被视为已付的外国税收抵免（间接外国税收抵免）通常不获接受。

此外，根据税收条约，在发展中国家设有分公司或子公司的国内公司可获得税收饶让。

对公司征收的税率

	2019年10月1日前的年份	2019年10月1日或以后的年份
法人税 (National corporate income tax) (包括地方法人税 (Local corporate tax))	24.221%	25.589%
住民税 (Local inhabitant tax)	2.992%-3.782%	1.624%-2.413%
地方企业税 (Local enterprise tax) (包括特殊公司企业税 (Special corporate enterprise tax))	3.600%-3.780%	3.600%-3.780%
未分配留存收益的附加税	不适用	不适用
替代性最低税	不适用	不适用

备注：

1. 上述税率适用于注册资本金额超过1亿日元（100万美元）的公司。
2. 综合标准有效税率约为29.74%-30.62%。
3. 家族企业某些未分配利润需征收家庭企业税。

税务合并

日本母公司及其在日本国内 100%（直接或间接）控股的所有子公司可以选择提交合并纳税申报表（仅针对法人税）。

一般而言，子公司在进入合并集团之前必须立即将某些资产价值调至市场公允价。子公司的净经营亏损（NOL）将在进入合并集团时到期。在某些情况下（例如：母公司拥有子公司 100% 权益超过五年）可能对这些规则获得例外（例如，调至与市场公允价相符和未实现的 NOL）。

新集团收入和损失分摊规则将于2022年4月1日起和以后的应纳税年份生效，并取代税收合并制度。根据新规定，公司的损失可以结转到同一公司集团内的另一家公司并与之共享。损失分摊将在申报原始纳税申报表时确定，如果应纳税所得额或损失根据随后的税务评估或修订的纳税申报表增加或减少，损失分摊也不会受到此类评估或修订的纳税申报表的影响。

净经营亏损 (Net operating loss, NOL)

NOL 可以通过以下方式使用:

- ▶ 回溯: 一年 (仅限合格的中小型企业)
- ▶ 结转: 10 年 (2018 年 4 月 1 日之前的税务年份开始后的9年录得的损失)
- ▶ 使用限制: 本年度应纳税收入的最多 50% (合格的中小型企业可获100%)

控制变更规则在某些情况下适用 (例如: 终止所有业务并在控制更改后开始另一项业务)。

税收优惠

日本提供各种税收优惠 (如税收抵免、特别折旧), 例如:

- ▶ 研发
- ▶ 国内机械、节能设施和 5G 技术的投资
- ▶ 加薪

消费税

除了一些例外, 在日本销售或租赁商品和提供服务时需征收消费税。

自2019年10月1日起, 税率为10%。已降低的税率8%适用于新鲜和加工食品, 但不包含在餐厅供应的酒精饮料和食品饮料。

零税率适用于出口交易。

印花税

执行某些类型的文件时, 如房地产和业务转让协议, 征收印花税。印花税税率一般最高达到 60 万日元 (6,000美元)。

对日本公司股票的处置不征收印花税。

公司的其他税收

资本税 (注册税)	<ul style="list-style-type: none">▶ KK-0.7%法定资本 (最少15万日元或1,500美元)▶ GK-0.7%法定资本 (最少6万日元或600美元)
房地产转让登记税	估值的2% (土地估值的1.5%)
房地产购置税	估值的4% (土地估值的3%)
固定资产税 (折旧资产)	截至1月1日可折旧固定资产的净税账面价值的1.4%
事业所税	总工资0.25%或商业用途的地面面积每平方米600日元 (6 美元)

股息、利息、特许权使用费和资本利得税

利息收入和资本利得或损失纳入普通应纳税所得额。由全资拥有的国内公司支付的股息完全免除法人税。

如果持有支付股息的国内公司的所有权低于 100%但高于 33.33%，则股息（扣除因收购股份而产生的任何相关利息费用）不包含在总收入内。如果国内股东持有支付股息的日本公司 33.33% 或以下的权益，则国内股息的50%应纳税。如果持股比例5% 或更低，80% 的国内股息应纳税。

95%的外国股息（拥有25%或以上的所有权）一般不包含在应纳税所得额内（外国预提税不得抵免或扣除）。根据某些税收协定，25%的所有权门槛可能会降低。对外国子公司支付的股息的豁免不适用于在外国子公司所在国家可税前扣除的股息。

就日本法人税而言，资本利得被视为适用正常税率的普通收入。除非在某些条件下获得适用的税收条约的豁免以外，外国公司持有的某些股份转让所得的资本收益须缴纳法人税，例如：（1）直接或间接持有日本公司至少 25% 的股份（在过去三年中进行了测试），并在某一年出售了至少5%的股份；（2）房地产控股公司的股份（其中至少50%的资产由位于日本的不动产组成）。非居民资本利得税税率为24.22%（适用于2018年4月1日或之后至2019年10月1日之前的财政年度）和25.59%（适用于2019年10月1日或之后的财政年度）。

预提税 (Withholding tax)

日本对股息、利息和特许权使用费按20.42%的国内税率征收非居民预提税，除非适用税收协定更低的税率。向非居民支付的其他款项如果构成来自日本的收入，也可能需要缴纳预扣税。

间接转让

一般而言，间接转让日本公司股份不涉及不利的日本税收影响，除非受让人公司是房地产控股公司。

税收协定

截至2020年6月，日本已签署了76项所得税条约，所有这些条约均已生效。

税收协定适用的申请和时间点

向非居民付款前，必须通过扣缴义务人向税务机关提交预扣税减免申请表。如果是资本利得税豁免，则必须在非居民公司财政年度结束后两个月内向税务机关提交申请。

一般而言，税收身份证明必须附于申请表格之后，以申请受利益限制条款约束的税收协定优惠待遇。

一般反避税规则 (General anti-avoidance rules, GAAR)

日本没有一般反避税规则 (GAAR)，但它确实有具体的反避税规则，适用于（1）密切控股公司、（2）公司重组、（3）公司税收合并和（4）计算归属于日本常设机构的日本来源收入。日本税务机关可利用实质重于形式的原则来拒绝仅为税收协定优惠而进行的交易的税收协定优惠。

转让定价 (Transfer pricing, TP)

一般而言，日本税务机关在必要范围内参考OECD的转让定价准则。

年度公司纳税申报表必须附有向日本税务机关申报关于境外附属公司人员和交易的详情的声明 (Schedule 17-4)。

日本采用了转让定价文档和报告规则，包括国别 (country-by-country, CbC) 报告、主体文档和本地文档，分别适用于2016年4月1日或之后开始的财政年度 (国别报告和主文档) 和2017年4月1日或之后开始的财政年度 (本地文档)。

日本公司是集团收入在上一个财年为 1,000 亿日元 (约合 10 亿美元) 及以上的跨国集团的最终母公司，必须提交国别报告。日本公司 (包括非日本集团公司的常设机构) 可能需要在某些条件下提交国别报告。可达成预约定价安排 (APA) (单边和双边 APA)，并且非常常见。

资本弱化规则 (Thin capitalization rules)

日本资本弱化的负债与权益比率为3: 1。贷款的超额部分利息是永久不可扣除的。此外，利息的扣除额可能受下列收益剥离规则的限制：

- ▶ 超过调整后应纳税所得额50%的净利息不可扣除 (2020年4月1日或之后开始的财政年度的起征点为20%)。
- ▶ 非扣除净利息可结转七年。

企业纳税人必须对其涉外债务的利息支出进行这两项测试。如果两个测试都符合，可导致适用更多不允许扣除的测试。

受控外国企业 (Controlled foreign corporation, CFC)

根据现行的CFC规则，由日本居民持有大部分股份的外国公司，倘若符合以下任何一项测试，会被视为避税天堂公司：

- ▶ 有效税率少于 30% 的纸面公司、现金箱或黑名单公司
- ▶ 不符合经济活动标准且有效税率少于 20% 的外国公司

一般而言，如果日本股东持有避税天堂公司至少 10% 的股份，则该避税天堂公司的收入将按其所有权比例计入日本股东的应纳税所得额中。

如果外国公司的实际税率低于20%，并且符合经济活动标准，则仅有某些被动收入会被计入日本股东公司的应纳税所得额。

税务机关

国家税务局是日本的税务机关。

税务行政

▶ 税务年度和纳税申报日

- ▶ 公司章程中规定的会计年度用作税务年度。
- ▶ 企业纳税申报表必须在纳税年度结束后两个月内提交。通常可向税务机关申请延期一个月（合并纳税申报表可申请延期两个月），在此期间，将对应纳税额征收一个月或两个月延期的利息。某些公司可以延期四个月。

▶ 追溯时效(Statute of limitations)

- ▶ 追溯时效一般为五年。
- ▶ 转让定价评估的追溯时效为六年（自2020年4月1日或之后开始的财政年度为七年）。
- ▶ 欺诈性避税评估的追溯时效为七年，纠正净经营亏损（NOL）金额的诉讼时效为十年。

▶ 处罚

- ▶ 纳税人未及时申报、纳税或者少报应纳税款的，可以处以罚款。

▶ 税务裁定

- ▶ 可以通过税务裁定来确认税务处理，但这在实践中并不常见，因为裁定的细节会向公众披露。当事人可以使用不具约束力的预先咨询，而不是获取税务裁定。

会计原则和财务报表

适用日本通用会计原则。

一般而言，私营公司不受法定报告要求约束。但是，如果公司形式是 KK，需要披露资产负债表。此外，如果 KK 是一家大型公司，定义是股本最少达到 5 亿日元（500 万美元）或负债最少为 200 亿日元（2 亿美元）的公司，需要披露损益表，并必须进行法定审计。

外汇管制

一般而言，外汇交易不会受到政府管控。

货币

日元。一个日本实体必须拥有以日元计算的财务信息，包括纳税申报。

股息分配

《公司法》要求股息按法定准备金要求从可分配盈余中分配。

中期股息

允许中期股息分配。

中国海外投资业务部（COIN）

中国海外投资业务部（China Overseas Investment Network 简称“COIN”）将安永全球的专业人员连接在一起，促进相互协作，为中国企业的国际化发展提供全球一致的高质量服务。安永在美洲、EMEIA（欧洲、中东、印度及非洲）和亚太各大区设置了专业的中国商业顾问团队，服务网络覆盖全球超过70个国家和地区。

COIN是安永向客户提供全球无缝、高质量服务承诺的一部分，为到海外拓展业务的中国公司提供服务。全球一体的结构使我们能调动有敬业精神、具有丰富当地经验及深入行业知识的专业团队为安永的客户提供各类专业服务。



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- ▶ 美国
- ▶ 加勒比地区
- ▶ 以色列
- ▶ 玻利维亚
- ▶ 厄瓜多尔
- ▶ 牙买加
- ▶ 墨西哥
- ▶ 秘鲁
- ▶ 委内瑞拉
- ▶ 阿根廷
- ▶ 巴西
- ▶ 智利

欧洲、中东、印度及非洲区

- ▶ 奥地利
- ▶ 比利时
- ▶ 捷克
- ▶ 丹麦
- ▶ 芬兰
- ▶ 法国
- ▶ 德国
- ▶ 希腊
- ▶ 匈牙利
- ▶ 意大利
- ▶ 哈萨克斯坦
- ▶ 吉尔吉斯斯坦
- ▶ 卢森堡
- ▶ 荷兰
- ▶ 挪威
- ▶ 巴基斯坦
- ▶ 波兰
- ▶ 葡萄牙
- ▶ 罗马尼亚
- ▶ 俄罗斯
- ▶ 西班牙
- ▶ 瑞典
- ▶ 瑞士
- ▶ 土耳其
- ▶ 英国
- ▶ 乌兹别克斯坦
- ▶ 巴林
- ▶ 埃及
- ▶ 科威特
- ▶ 沙特阿拉伯
- ▶ 阿联酋
- ▶ 印度
- ▶ 阿尔及利亚
- ▶ 安哥拉
- ▶ 喀麦隆
- ▶ 刚果民主共和国
- ▶ 埃塞俄比亚
- ▶ 利比亚
- ▶ 莫桑比克
- ▶ 尼日利亚
- ▶ 南非
- ▶ 南苏丹
- ▶ 乌干达
- ▶ 赞比亚
- ▶ 津巴布韦

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- ▶ 新西兰
- ▶ 日本
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- ▶ 柬埔寨
- ▶ 印度尼西亚
- ▶ 老挝
- ▶ 马来西亚
- ▶ 缅甸
- ▶ 菲律宾
- ▶ 新加坡
- ▶ 斯里兰卡
- ▶ 泰国
- ▶ 越南



我们如何在行业中别树一帜

国际化背景和本土化专业知识

安永全球整合的服务网络和本地化的专业知识将有益于客户的海外投资；我们在全球几乎每个国家都有业务布局并拥有丰富的经验。安永在大中华区还具有专门的本地资源，在协助中国企业进行海外投资活动方面有丰富的经验。

多种语言的无缝专业服务

我们在审计、税务、战略与交易和咨询服务领域的专业人员，精通各种当地语言，如中文、日文和英文。他们还拥有丰富的本地和国际市场知识和经验，为您的海外业务提供适切的帮助。

我们的资质和经验

安永的团队曾协助众多拥有国际化战略目标的中企拓展海外市场或进行重要的跨境并购交易活动。过去三年，我们曾协助超过3,200家大中华区客户实施了超过74,000个与海外投资相关的项目。我们提供的服务包括战略与交易、财务、税务和咨询服务等，不仅包括投资前的战略规划与风险评估等，同时包括收购与整合过程中的尽职调查与估值，以及如何在出售与拆分中更好进行资产剥离，帮助客户提高盈利能力，优化投资组合，实现可持续增长。

我们具备丰富跨国投资经验的专业团队，通过深厚的行业专业知识和全球优势的定制服务来帮助客户应对在不同领域遇到的复杂挑战。

- ▶ 先进制造
- ▶ 银行与资本市场
- ▶ 消费品与零售
- ▶ 政府与公营机构
- ▶ 健康
- ▶ 保险
- ▶ 生命科学
- ▶ 媒体及娱乐
- ▶ 采矿与金属
- ▶ 移动出行
- ▶ 石油与天然气
- ▶ 电力与公用事业
- ▶ 房地产、酒店与建造
- ▶ 科技
- ▶ 电信
- ▶ 商社
- ▶ 财富与资产管理



我们的全程一站式服务

在中国公司走向世界的过程中，常会碰到许多挑战，我们在海外投资的前、中、后各个阶段（包括筹划、执行、整合）提供广泛的专业服务，帮助客户应对不同挑战。

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- ▶ 市场进入策略
- ▶ 投资地点调研
- ▶ 投资环境和市场分析
- ▶ 新市场开发分析
- ▶ 并购战略
- ▶ 寻找目标企业
- ▶ 政府关系管理
- ▶ 法律服务*
- ▶ 风险评估
- ▶ 房地产交易咨询
 - ▶ 建造及发展咨询
 - ▶ 投资分析

项目交易执行

- ▶ 财务尽职调查
- ▶ 税务尽职调查
- ▶ 商业尽职调查
- ▶ 运营尽职调查
- ▶ 交易结构设计
- ▶ 融资方案规划
- ▶ 税务筹划
- ▶ 估值模型和经济咨询
- ▶ 交易谈判支持
- ▶ 政府审批和公司注册协助
- ▶ 房地产咨询
 - ▶ 房地产尽职调查及估价
 - ▶ 房地产税务筹划
 - ▶ 程序设计及管理
- ▶ 财务会计咨询
 - ▶ 会计准则转换
 - ▶ 交易会计与报告支持
 - ▶ 收购对价分摊

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- ▶ 首天准备程度评估及首100天工作规划
- ▶ 协同效应评估及落实
- ▶ 重组 / 整合
- ▶ 业绩改善 — 财务 / 客户 / 供应链
- ▶ 风险 — 风险评估 / 内部控制 / 变革
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*在部分国家和地区提供法律服务
(承接部分服务需满足相关条件，详情请与我们接洽)



安永——专业服务机构

安永关心客户业务的长期价值、身处的行业发展趋势，以及客户企业的全球化旅程。安永将其在全球超过150个国家和地区的业务整合为以下三个区域：美洲、EMEIA（欧洲、中东、印度及非洲）和亚太区，这使安永成为全球业务高度整合的专业服务机构之一。

安永在全球的网络，使我们经验丰富并具有深入行业知识的专业团队能够更迅速地提供切合客户需求的服务。安永的全球跨领域和互相合作的模式，让客户从我们提供的全球视野和高效运作中获益。

安永日本

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- ▶ Ernst & Young Tax Co.
- ▶ Ernst & Young Transaction Advisory Services Co., Ltd.
- ▶ EY Advisory & Consulting Co., Ltd.
- ▶ Ernst & Young Business Partner Co., Ltd.
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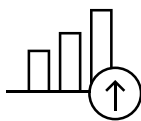
安永日本概览



9,477
2021财年人员数目



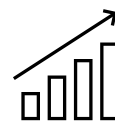
1,542 亿
2021财年总收入
(日元)



9.9%
2020财年至 2021财年
总收入增长



连续**四**年
Pride Index（骄傲指数）金奖



7.9%
2020财年至 2021财年
人员数目增加



跨领域专业服务

审计

EY ShinNihon是日本最大的审计成员机构，为客户提供审计、保证、财务咨询和各类型专业服务（如法证、气候变化与可持续发展服务）。

税务

安永的团队拥有丰富的经验和科技能力，在国际税务、并购重组和转让定价等领域，为个人、日本和跨国公司客户，提供需要的税务咨询和合规服务。

战略和交易

我们可以协助开发和实施资本布局和交易战略，加快实现价值创造。凭借我们全球一体的服务网络，能够协助客户掌握复杂的市场形势。我们的服务支持客户在战略、购买和整合、销售和分拆、重塑业绩和企业融资等方面的业务需要。

咨询

安永通过提出更好的问题，运用团队协作与客户、市场影响者和全球战略联盟等携手，应对全球严峻至极的挑战，努力建设更美好的商业世界。

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税务服务



吴筱
国际税务和交易咨询服务税务总监
Ernst & Young Tax Co.
+81 90 1283 3918
xiao.wu2@jp.ey.com
大阪



王若云
国际税务和交易咨询服务
转让定价高级经理
Ernst & Young Tax Co.
+81 80 6232 4125
ruoyun.wang@jp.ey.com
东京

咨询服务



何敏
战略与交易咨询服务总监
EY Strategy and Consulting Co., Ltd
+81 90 8680 4119
min.he@jp.ey.com
东京



安永 | 建设更美好的商业世界

安永的宗旨是建设更美好的商业世界。我们致力帮助客户、员工及社会各界创造长期价值，同时在资本市场建立信任。

在数据及科技赋能下，安永的多元化团队通过鉴证服务，于150多个国家及地区构建信任，并协助企业成长、转型和运营。

在审计、咨询、法律、战略、税务与交易的专业服务领域，安永团队对当前最复杂迫切的挑战，提出更好的问题，从而发掘创新的解决方案。

安永是指 Ernst & Young Global Limited 的全球组织，加盟该全球组织的各成员机构均为独立的法律实体，各成员机构可单独简称为“安永”。Ernst & Young Global Limited 是注册于英国的一家保证（责任）有限公司，不对外提供任何服务。请登录 ey.com/privacy，了解安永如何收集及使用个人信息，以及在个人信息法规保护下个人所拥有权利的描述。安永成员机构不从事当地法律禁止的法律业务。如欲进一步了解安永，请浏览 ey.com。

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安永中国海外投资业务部



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Doing business in Japan

China Overseas Investment Network



EY 安永

Building a better
working world



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¹ EY Japan collectively refers to EY member firms in Japan.

Setting up an entity in Japan



Business entities

There are two major types of limited liability companies in Japan. One is a joint stock company (*kabushiki kaisha* or KK) and the other is a limited liability company (*godo kaisha* or GK). KK is the most widely-used form of a corporation for both small, private companies and large, listed companies. GK, which was introduced in 2006, is somewhat similar to LLC in the US and is optimal for small, private companies. Historically, KK has been the main choice of corporations in Japan, but the use of GK is increasing.

The following table shows the key legal characteristics of KK and GK:

	KK (non-public KK)	GK
Separation of ownership and management	Yes Shareholders appoint director(s)	No Members (i.e., equity holders) directly manage the business
Minimum amount of capital	JPY1	JPY1
Limited liability status of shareholders/members	Limited to the extent of capital contribution	Limited to the extent of capital contribution, but the managing member could be liable to third parties, if it fails to perform its duty to manage the business
Minimum number of shareholders/members	One	One
Transfer of shares/equity interests	The articles of incorporation may provide that share transfers require the company's approval (a KK with such a provision is referred to as a "non-public KK") ²	The default rule requires the members' unanimous approval for any transfer of equity interests
Executives ³	<ul style="list-style-type: none"> ▶ At least one director needs to be appointed. Directors need to be natural people ▶ The default rule bestows each director the power to represent the KK, but they can appoint one or more representative directors ▶ If a KK wishes to form a board of directors, at least three directors need to be appointed, of which at least one must be a representative director 	<ul style="list-style-type: none"> ▶ The default rule bestows each member the power to represent the GK, but the members can appoint one or more representative members ▶ If the representative member is a legal entity, such member must appoint a natural person as an executive officer (<i>shokumu shikkosha</i>), who actually executes the business of the GK
Term of office of directors/members	Maximum 10 years	No limitation
Board of directors/members	Not required	Not required
Statutory auditor and accounting auditor	<ul style="list-style-type: none"> ▶ A "statutory auditor" is required if the KK has a board of directors ▶ Both a statutory auditor and an accounting auditor are required if the stated capital is JPY500 million or more, or the total liability is JPY20 billion or more 	Not required
Public disclosure of financial statements	Required (annually)	Not required

² Shares in a KK are generally freely transferable unless restricted by the articles of incorporation.

³ The requirement to have at least one Japan resident representative director/member was abolished in March 2015.

Steps of incorporation

The incorporation of a KK or GK usually takes three to four weeks. The required documents and their contents differ for each case.

The key steps for the typical incorporation procedures⁴ are as follows:

	KK	GK
1.	(If required) submit a prior notification on inward direct investment to the relevant Ministries via the Bank of Japan and wait for the clearance ⁵	
2.	Prepare an affidavit on the promoter (i.e., the initial shareholder) with notarization in the promoter's country if the promoter is a foreign legal entity	Prepare an affidavit on the representative member with notarization in the representative member's country, if the representative member is a foreign legal entity
3.	Prepare the KYC documents on a substantial controller for the notarization, adopt the articles of incorporation and have them notarized by a Japanese notary public	Adopt the articles of incorporation (notarization is not required)
4.	Deposit capital in the promoters' bank account at a bank licensed in Japan, minimum JPY1	Deposit capital in the representative member's bank account, minimum JPY1
5.	Appoint one or more directors and the representative director (as necessary)	Appoint a representative member (as necessary). If the representative member is a legal entity, it must appoint a natural person as an executive officer (<i>shokumu shikkosha</i>) who will actually execute the business
6.	Submit an application for company registration to the Legal Affairs Bureau (Ministry of Justice). It generally takes one week to complete the company registration	
7.	Submit a post facto report on inward direct investment to the relevant ministries via the Bank of Japan	

⁴ Alternative methods of incorporation may be available if there is a logistical issue or otherwise.

⁵ In certain cases (especially, where the business to be operated by a new company falls under certain business regulated under the Foreign Exchange and Foreign Trade Act and/or the products or services to be handled by the new company are subject to export controls), a prior notification and clearance procedures would be required.

Branches of foreign companies

A foreign company that intends to conduct business in Japan continuously must (i) establish a subsidiary or (ii) file for the registration of a Foreign Company (so-called branch establishment). Differently from a subsidiary, a branch does not have its own legal corporate status and a foreign company will be directly liable for the activities conducted by the branch.

In order to establish a branch in Japan, a foreign company needs to appoint at least one individual representative (who must be resident in Japan). The branch needs to be registered with the Legal Affairs Bureau.

The key steps for the typical procedures of branch establishment are as follows:

1. (If required) submit a prior notification on inward direct investment to the relevant Ministries via the Bank of Japan and wait for the clearance⁶
2. Appoint one or more branch representative(s). At least one of the branch representatives must be resident in Japan but citizenship is not required
3. Prepare an affidavit on the foreign company with notarization in the foreign company's country
4. Register the branch with the Legal Affairs Bureau (Ministry of Justice) within three weeks from the appointment of the branch representative. It generally takes one to two weeks to complete this branch registration

Steps 2 to 4 for setting up a branch in Japan usually take three to four weeks, after the necessary information is provided.

The branch can be opened upon the appointment of the branch representative, except that prior notification and clearance are required in certain cases.

A branch operation is acceptable in any business category unless applicable regulation law for the business to be conducted requires any independent Japanese legal entity (such as a KK or GK). A Japanese branch of a foreign company can have a bank account located in Japan after the branch registration is completed.

A foreign company with a permanent establishment (PE) (e.g., branch) in Japan is subject to Japanese corporate income tax (CIT) for the income attributable to the PE.

Representative office (RO)

It is easier to set up a representative office. However, a RO may not engage in any commercial transactions. Its activities are limited solely to information gathering, market research and general liaison activities.

Since a RO will not engage in any commercial transactions, in general, a RO is not subject to corporate tax in Japan. However, if a foreign company has direct sales in Japan and its RO is involved in the direct sales, the RO could be subject to tax as a branch.

A foreign corporation can set up an RO in Japan. The RO is not required to be registered with the Legal Affairs Bureau. However, a notification to the Financial Services Agency must be made prior to the establishment of the RO of foreign banks, insurance companies, securities companies or other financial institutions.

The RO is an extension of its foreign head office and typically cannot open a bank account or lease real estate in its own name.

⁶ In certain cases (especially, where the business to be operated by a branch falls under certain businesses regulated under the Foreign Exchange and Foreign Trade Act and/or the products or services to be handled by the new company are subject to export controls), a prior notification and clearance procedures would be required.

Corporate tax and investment highlights



Permanent establishment (PE)

The definition of a PE under Japanese domestic tax law is basically similar to that of the Organisation for Economic Co-operation and Development (OECD) model treaty.

However, there are a number of Japanese tax treaties that provide the pre-base erosion and profit shifting version of the OECD model treaty.

Residence

A corporation that is incorporated or has its head office in Japan is treated as a resident corporation (no central management and control or effective management criteria are used to determine the tax residence of a corporation).

Basis of taxation

Resident corporations are subject to Japanese CIT on their worldwide income, with an exemption for dividends received from certain subsidiaries (please see *Taxation of dividends, interest, royalties and capital gains* section).

Non-resident corporations without a PE are subject to Japanese CIT on their Japan-sourced income.

A foreign corporation with a PE in Japan is subject to Japanese CIT for the income attributable to the PE. A PE of a foreign corporation is assumed to be a separate and independent entity from its head office, and the arm's length principle is applied to income attributable to a PE arising from deemed intra-company transactions.



Foreign tax credit

A foreign tax credit is allowed for direct foreign taxes (subject to limitations). A deemed paid foreign tax credit (indirect foreign tax credit) is generally not available.

In addition, under tax treaties, a tax-sparing credit may be available to domestic companies with a branch or subsidiary in a developing country.

Corporate tax rates

	Years beginning before 1 October 2019	Years beginning on or after 1 October 2019
National CIT (includes local corporate tax)	24.221%	25.589%
Local inhabitant tax	2.992%-3.782%	1.624%-2.413%
Local enterprise tax (includes special corporate enterprise tax)	3.600%-3.780%	3.600%-3.780%
Surtax on undistributed retained earnings	Not applicable	Not applicable
Alternative minimum tax	Not applicable	Not applicable

Notes:

1. The tax rates shown above are for a company of which the registered capital amount is more than JPY100 million (US\$1 million).
2. The combined standard effective tax rate is approximately 29.74%-30.62%.
3. Family corporation tax is applied for certain undistributed profits for family corporations.

Tax consolidation

A Japanese parent company and all of its 100% (directly or indirectly) domestic subsidiaries can elect to file consolidated tax returns (for national CIT only).

Generally, a subsidiary has to mark to market certain assets immediately before entering into a consolidation group. A subsidiary's net operating loss (NOL) will expire at the time of entering into the consolidation group. An exception to these rules (e.g., mark to market and unutilized NOL) may be available in certain cases (e.g., 100% owned by the parent company for more than five years).

New group income and loss sharing rules will be introduced effective for taxable years beginning on or after 1 April 2022 as a replacement for the tax consolidation regime. Under the new rules, the loss of a company can be passed to and shared with another company within the same company group. Loss sharing will also be fixed at the time of the original tax return filing, and if taxable income or loss increases or decreases pursuant to a subsequent tax assessment or an amended tax return, the loss sharing will not be impacted by such an assessment or amended tax return.

Net operating loss (NOL)

NOL can be utilized in the following manner:

- ▶ Carryback: one year (qualified small or medium-sized corporations only)
- ▶ Carryforward: 10 years (9 years for losses incurred in tax years beginning before 1 April 2018)
- ▶ Limit of utilization: up to 50% of current year's taxable income (100% for qualified small or medium-sized corporations)

Change-in-control rules are applicable in certain circumstances (e.g., terminate all business and start another business after the control change).

Tax incentives

Japan offers various tax incentives (e.g., tax credit, special depreciation), such as:

- ▶ Research and development
- ▶ Investments in domestic machinery, energy-saving facilities and 5G technology
- ▶ Salary increase

Consumption tax

Consumption tax is imposed on the sale or lease of goods and provision of services in Japan, with some exceptions.

The tax rate is 10% beginning 1 October 2019. An 8% reduced rate applies to fresh and processed foods except for alcoholic beverages and food/beverages served at a restaurant.

0% applies to export transactions.

Stamp duty

Stamp duty is imposed when certain types of documents are executed, e.g., real estate and business transfer agreements. The maximum stamp duty liability is generally up to JPY600,000 (US\$6,000).

Stamp duty is not imposed on the disposal of shares of a Japanese corporation.

Other taxes on corporations

Capital duty (registration tax)	<ul style="list-style-type: none">▶ KK - 0.7% of stated capital (minimum JPY150,000 or US\$1,500)▶ GK - 0.7% of stated capital (minimum JPY60,000 or US\$600)
Registration tax on transfer of real estate	2% on the appraisal value (1.5% for land)
Real estate acquisition tax	4% on the appraisal value (3% for land)
Depreciable fixed assets tax	1.4% on the net tax-book value of the depreciable fixed assets as of 1 January
Business premise tax	0.25% on total salary or JPY600 (US\$6) per square meter of floor space in business use

Taxation of dividends, interest, royalties and capital gains

Interest income and capital gains or losses are included in ordinary taxable income. A dividend paid by a wholly owned domestic corporation is fully exempt from CIT.

If ownership in a dividend-paying domestic corporation is less than 100% but more than 33.33%, dividends, net of any related interest expense incurred for acquisition of the shares, are excluded from gross income. Fifty percent of domestic dividends are taxable if the domestic shareholder holds a 33.33% interest or less in a Japanese distributing company. If the ownership percentage is 5% or less, 80% of domestic dividends are taxable.

Ninety-five percent of foreign dividends (with 25% or more ownership) are generally excluded from taxable income (no credit or deduction is available for foreign withholding tax). The ownership threshold of 25% may be reduced under certain tax treaties. This exemption for dividends paid by a foreign subsidiary will not be available for dividends that are deductible in the country where the foreign subsidiary is located.

For Japanese corporate tax purposes, capital gains are treated as ordinary income to which normal tax rates apply. Capital gains from the transfers of certain shares held by a foreign company are subject to corporation taxes, unless exempted by applicable tax treaties, under certain conditions, for example: (1) shares in a Japanese corporation owned at least 25% directly or indirectly (tested for the past three years) and sold at least 5% in a given year and (2) shares in a real estate holding corporation (at least 50% of whose assets consist of real properties located in Japan). The rate for the non-resident capital gains taxes is 24.22% (for fiscal years beginning on or after 1 April 2018 but before 1 October 2019) and 25.59% (for fiscal years beginning on or after 1 October 2019).

Withholding tax

Japan levies a non-resident withholding tax on dividends, interest and royalty payments at the domestic tax rate of 20.42%, unless reduced by applicable tax treaties. Other payments made to a non-resident may also be subject to withholding tax if they constitute Japan-sourced income.

Indirect transfer

Generally, there are no adverse Japanese tax implications on an indirect transfer of shares of a Japanese corporation, unless the transferee company is a real estate holding company.

Tax treaties

As of June 2020, Japan had signed 76 income tax treaties, all of which are in force.

Tax treaty application and timing

An application form for withholding tax reduction or exemption has to be filed with tax authorities through a withholding agent before a payment is made to non-residents. In case of a capital gains tax exemption, the application has to be filed with tax authorities within two months from the non-resident company's fiscal year-end.

In general, a residency certificate has to be attached to an application form for claiming a tax treaty benefit that is subject to a limitation-on-benefits clause.

General anti-avoidance rules (GAAR)

Japan has no GAAR, but it does have specific anti-avoidance rules for (1) closely held corporations, (2) corporate reorganization, (3) corporate tax consolidation and (4) calculation of Japan-sourced income attributable to a PE in Japan. Japanese tax authorities may use the substance-over-form concept to deny tax treaty benefits for transactions motivated only for tax treaty benefit.

Transfer pricing (TP)

In general, the Japanese tax authorities refer to the OECD TP guidelines to the extent necessary.

A statement concerning details of foreign-affiliated persons and transactions with Japanese tax authorities (Schedule 17-4) has to be attached to the annual corporate tax returns.

Japan adopted TP documentation and reporting rules that include country-by-country (CbC) reporting, master file and local file applying for fiscal years beginning on or after 1 April 2016 (for CbC reporting and master file) and fiscal years beginning on or after 1 April 2017 (for local file).

A Japanese company that is the ultimate parent of a multinational group having a group revenue of JPY100 billion (approximately US\$1 billion) or more in the preceding fiscal year must file a CbC report. Japanese companies (including a PE of a non-Japanese group company) may be required to file the CbC report under certain conditions. An advance pricing agreement (APA) (unilateral and bilateral APAs) is available and very common.

Thin capitalization rules

Japan has a thin capitalization debt-to-equity ratio of 3:1. Interest on the excess portion of loans is permanently non-deductible. In addition, the deductibility of interest may be limited by the following earnings stripping rules:

- ▶ Net interest exceeding 50% of adjusted taxable income is non-deductible (the threshold will be 20% for fiscal years starting on or after 1 April 2020)
- ▶ Non-deducted net interest can be carried forward for seven years

A corporate taxpayer has to apply both tests to its interest expense on foreign-related debt. If both of the tests apply, the test that gives rise to the greater disallowance would apply.

Controlled foreign corporation (CFC)

Under the current CFC rules, a foreign corporation with a majority of shares owned by Japanese residents is treated as a tax haven company if such foreign corporation meets either of the tests below:

- ▶ A paper company, cash box or blacklist company that has an effective tax rate of less than 30%
- ▶ A foreign corporation that does not meet the economic activity criteria and has an effective tax rate of less than 20%

Generally, the income of a tax haven company is included in the Japanese shareholder's taxable income in proportion to its ownership if the Japanese shareholder owns at least 10% of the tax haven company.

If a foreign corporation's effective tax rate is less than 20% and meets the economic activity criteria, only certain passive income is included in the Japanese corporation's taxable income.

Tax authority

The National Tax Agency is the tax authority in Japan.

Tax administration

▶ Tax year and tax return filing date

- ▶ The fiscal year stated in the articles of incorporation is used as the tax year
- ▶ Corporate tax returns have to be filed within two months after the tax year-end. A one month extension (a two-month extension for consolidated tax returns) is normally available on application to the tax authorities, during which interest will be applied for the tax liability for a one- or two-month period. A four-month extension could be available for certain corporations

▶ Statute of limitations

- ▶ The statute of limitations is five years in general
- ▶ The statute of limitations is six years for TP assessment (seven years for fiscal years starting on or after 1 April 2020)
- ▶ The statute of limitations is seven years for assessment on fraudulent tax avoidance and ten years for correcting the amount of NOL

▶ Penalties

- ▶ Penalties may be imposed on taxpayers that fail to file tax returns in a timely manner, pay taxes or underreport their total tax due

▶ Tax rulings

- ▶ A tax ruling is available to confirm a tax position, but this is not commonly used in practice as the details of the ruling are disclosed to the public. Instead of obtaining a tax ruling, parties may use non-binding pre-consultation

Accounting principles and financial statements

Japanese generally accepted accounting principles apply.

Generally, a private company is not subject to a statutory reporting requirement. However, if the form of a company is a KK, a balance sheet needs to be disclosed. Also, if the KK is a large company, which is defined as a company with a share capital of at least JPY500 million (US\$5 million) or liabilities of at least JPY20 billion (US\$200 million), it needs to disclose an income statement and has to have a statutory audit.

Foreign exchange control

In general, foreign exchange transactions are not subject to government control.

Currency

The currency is the Japanese Yen (JPY). A Japanese entity is required to have financials in JPY for various reasons, including tax return reporting.

Dividend distribution

The Company Act requires dividends to be distributed out of distributable surplus, subject to a legal reserve requirement.

Interim dividend

Interim dividend distribution is allowed.

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- ▶ Life sciences
- ▶ Media & entertainment
- ▶ Mining & metals
- ▶ Mobility
- ▶ Oil & gas
- ▶ Power & utilities
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- ▶ Market entry strategy
- ▶ Location study
- ▶ Investment environment analysis and market diligence
- ▶ New market development analysis
- ▶ Merger and acquisition strategy
- ▶ Company targeting
- ▶ Government relations
- ▶ Law*
- ▶ Risk assessments
- ▶ Real estate advisory
 - ▶ Construction and development advisory
 - ▶ Investment analysis

Deal execution

- ▶ Financial due diligence
- ▶ Tax due diligence
- ▶ Commercial due diligence
- ▶ Operational due diligence
- ▶ Deal structuring
- ▶ Financing planning
- ▶ Tax planning
- ▶ Valuation, modelling and economics
- ▶ Deal negotiation support
- ▶ Government approval and business registration support
- ▶ Real estate advisory
 - ▶ Real estate property / portfolio due diligence and valuation
 - ▶ Real estate tax planning
 - ▶ Process design and management
- ▶ Financial accounting advisory
 - ▶ GAAP conversion
 - ▶ Transaction accounting and reporting
 - ▶ Purchase price allocation

Integration and closing

- ▶ Day-one readiness assessment and 100-day planning
- ▶ Synergy assessment and delivery
- ▶ Restructuring
- ▶ Performance Improvement - finance / customer / supply chain
- ▶ Risk – risk assessments / internal control / transformation
- ▶ IT advisory
- ▶ Assurance services – compliance and reporting / financial statement audit / consolidated reporting / internal control audit
- ▶ Tax advisory, tax policy and controversy
- ▶ Transfer pricing and operating model effectiveness
- ▶ Human capital
- ▶ Mobility
- ▶ Overseas IPO
- ▶ Sell-side assistance at the closing stage
- ▶ Real estate advisory
 - ▶ Real estate restructuring services
 - ▶ Project management
- ▶ Advisory for financial services
 - ▶ Anti-money laundering
 - ▶ Regulatory and compliance risk
 - ▶ Market risk and quantitative advisory services
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 - ▶ Economic capital and risk-adjusted performance management
 - ▶ Actuarial services
- ▶ Financial accounting advisory
 - ▶ Integration of financial statement closing process
 - ▶ Consolidation and reporting

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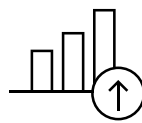
EY Japan at a glance



9,477
FY21 people



154.2 billion
FY20 total revenue (JPY)



9.9%
FY20 to FY19
total revenue
increase



4 consecutive years
Pride Index
Gold Award



7.9%
FY20 to FY21
people increase



Multidisciplinary professional services

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Contact us

Tax services



Xiao Wu
Director, International Tax and
Transaction Services - China Tax Desk
Ernst & Young Tax Co.
+81 90 1283 3918
xiao.wu2@jp.ey.com
Osaka



Ruoyun Wang
Senior Manager, International Tax and
Transaction Services - Transfer Pricing
Ernst & Young Tax Co.
+81 80 6232 4125
ruoyun.wang@jp.ey.com
Tokyo

Consulting services



Min He
Director, Strategy and Transactions
EY Strategy and Consulting Co., Ltd.
+81 90 8680 4119
min.he@jp.ey.com
Tokyo



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