

Tax Practice

Tax Practice Group

Our firm has considerable experience providing services to clients in connection with complex tax-related matters, including tax investigations and disputes as well as the tax aspects of transactional matters.

Focus on Providing the Best Advice for Each Client

The Tax Practice Group at Mori Hamada & Matsumoto and MHM Tax Advisory Services consists of several attorneys and licensed tax accountants, including those who have held important positions with governmental tax authorities. The Tax Practice Group keenly studies annual revisions of tax regulations and the latest tax-related juridical precedents and engages in continual training to ensure that it always provides advice optimized to meet our clients' needs.

MORI HAMADA & MATSUMOTO

MHM TAX ADVISORY SERVICES



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Tax Planning & Tax Advice

When commencing a new transaction, it is important to (i) confirm and minimize tax-related risks in advance and (ii) conduct thorough planning to gain the desired outcomes with respect to tax-related issues. Tax planning has become virtually indispensable as the structures of M&A transactions, business turnarounds, and financial transactions have become increasingly complex.

Our tax attorneys and licensed tax accountants work closely with our corporate, business turnaround and finance attorneys in structuring transactions with careful consideration of tax efficiency, while endeavoring to create plans that minimize tax-related risks and to prepare documentation that appropriately reflects those structures and plans. We also provide advice on preparatory measures for future tax investigations (e.g., maintenance of evidence by the preparation of minutes and written agreements) and prior consultation with tax authorities in connection with novel and complicated transactions (e.g., preparation of advance ruling requests and explanations to tax authorities).

In recent years, many of our clients have sought to better allocate resources within their corporate groups through corporate reorganizations. In advising clients on these types of transactions, our firm has developed strong expertise in the tax-related aspects of a wide variety of corporate reorganization procedures, including mergers, company splits, contributions-in-kind, distributions-in-kind, share exchanges and share transfers. These transactions often involve foreign subsidiaries, requiring additional consideration of CFC rules, foreign dividend exclusion systems, foreign income tax credits, transfer pricing taxation, anti-corporate inversion provisions, and thin capitalization taxation, as well as the application of relevant tax treaties. Tax planning for these transactions requires awareness of recent developments in international taxation rules. In sum, our attorneys are well equipped to advise clients on both the corporate and tax aspects of complex domestic and cross-border M&A, corporate reorganization transactions, and business turnarounds. We also have significant tax planning experience in the area of wealth

management and business succession, involving issues relating to inheritance tax and gift tax.

Tax Due Diligence & Tax Return Preparation and Filing Services

In general, tax due diligence is conducted before an M&A transaction is executed in order to investigate the scope and degree of tax risk borne by the target company. In recent years, tax authorities both in Japan and overseas require corporations to develop their own tax compliance structures, and corporations must evaluate and analyze whether they are subject to any tax risks.

MHM Tax Advisory Services reviews tax returns, analyzes tax risk in previous material transactions, examines internal company rules, and evaluates and analyzes other potential tax risks, while also providing a variety of services related to preparation and filing of tax returns.

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Tax Investigations

In addition to our expertise in tax law, our firm's breadth of transactional experience in the fields of M&A and finance is advantageous when we are called upon to assist with tax investigations that often require a deep understanding of those fields.

Tax investigations by governmental tax authorities are often quite complex and contentious due to the increasing complexity of commercial transactions, including cross-border M&A and financing transactions. Over the last ten years, the field of tax jurisprudence has developed steadily with the establishment of many important judicial precedents and court decisions concerning the tax aspects of commercial transactions. However, the development of tax law and jurisprudence often lags behind developments in commercial and transactional law and practice, leaving uncertainties and inconsistencies and creating the basis for disputes with

tax authorities as to the tax implications of various types of new and complex transactions.

Types of transactions that often become problematic

- Complex transactions without specific tax-related precedents (M&A, corporate reorganizations, financial and other transactions)
 - » intragroup corporate reorganizations involving utilization of net operating losses and other tax planning
 - » corporate reorganizations in other jurisdictions (such as mergers that are governed by foreign laws)
 - » transactions involving entities (such as partnerships, trusts and unit trusts) which are established under foreign laws
 - » transactions enabling tax reduction through depreciation and other deductible expenses
- Cross-border transactions
 - » transactions involving the interpretation of CFC rules
 - » consumption tax issues in cross-border transactions
 - » transactions with foreign group companies
 - » treatment of withholding tax related to payments to foreign companies (such as payments for cloud services or provision of know-how)
 - » issues as to the recognition of a permanent establishment
- Matters involving the applicability of judicial precedents
 - » transactions involving the applicability of anti-avoidance rules for reorganizations or intragroup transactions
 - » transactions involving "silent partnerships (*tokumei kumiai*)"
 - » transactions involving favorable issuance of new shares
- Matters involving the intersection of tax law with underlying legal relationships and regulatory law
 - » matters involving issues as to commission agents and delegated sales, distinctions between subcontracting and delegation, and ownership of intellectual property rights
 - » transactions for which the interpretation of corporate law affects tax implications

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» transactions for which the interpretation of business law (the Financial Instruments and Exchange Act, the Insurance Business Act, the Installment Sales Act, the Money Lending Business Act and other acts) has tax implications

In light of many legitimate uncertainties in the field of tax law and the tax implications of various types of transactions (for example, transactions involving issues concerning the structure of agreements, the nature of legal relationships, and the applicability of judicial precedents), it is important to receive the combined support of tax attorneys and licensed tax accountants with proper knowledge and experience in order to achieve the most advantageous resolution in a tax investigation.

Furthermore, a strategic approach that anticipates the potential for litigation and other disputes is necessary when handling tax investigations, because these investigations can effectively constitute the preliminary stages of litigation or other disputes depending on the matter in question. For this reason, it is beneficial to actively involve attorneys as well in tax investigations from the initial stages.

With this in mind, our firm's tax attorneys and licensed tax accountants have a wide range of experience in the practice of tax law and collaborate to provide support services for tax investigations. These services mainly include the provision of specialist advice from tax attorneys and licensed tax accountants at various stages of tax investigations, such as the planning of strategies in anticipation of litigation and other disputes, legal discussions and resolution-oriented negotiations with investigators in tax investigations and the submission of memorandums to tax authorities.

Tax Disputes

Tax disputes evoke a general impression of being difficult to win because you're "fighting against the government." Taxpayers may also be hesitant to vigorously pursue tax cases because of fear that it will negatively impact the future handling of tax investigations or lead to a deterioration in their relationship with tax authorities. Therefore, parties are often hesitant to file an appeal or a lawsuit against tax authorities even when they have legitimate objections to the findings of tax authorities in tax investigations. However, in recent years, there have been an increasing number of tax disputes that have been won by taxpayers who are represented by attorneys specializing in tax law. Further, corporate managers must exercise careful judgment regarding whether to accept the findings of tax authorities in terms of their accountability to shareholders.

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Our firm has a long history of expertise in litigation and other forms of dispute resolution, and this expertise extends to the area of tax disputes. In addition, our firm is proud to possess a scale and structure that enables and encourages our attorneys primarily practicing tax law to work as a team with other attorneys specializing in many other fields of law that become relevant in tax litigation (for example, intellectual property rights, financing and M&A), enabling the provision of comprehensive legal services. Because of this structure, our firm is able to offer successful strategies that we believe are unparalleled in Japan. Our firm has utilized this strength to achieve an excellent track record in this area of law, as demonstrated by the number of tax disputes in which our firm has achieved favorable outcomes on behalf of taxpayers. Our recent winning cases include the first-ever case where the fair value of class stock was disputed (as known as the Sazaby League case) and the case concerning the tax treatment of reorganization. We have strength in dealing with these kinds of cases where novel issues and a huge amount of taxes are disputed.

Record of Tax Practice

In recent years, our firm's attorneys have handled a broad range of tax matters, including the following:

Tax Planning & Tax Advice

M&A

- tax advice on M&A and joint venture structures
- tax advice on M&A and joint venture documentation (such as share purchase agreements)

Corporate reorganizations

- advice on CFC rules
- tax advice on structures in corporate reorganizations (including companies adopting the group tax relief system)
- representing a client in a consultation with tax authorities with respect to cross-border forward triangular mergers
- tax advice on structures in cross-border corporate reorganizations
- advice on overseas relocation of head offices
- advice and preparation of memorandums regarding the classification for tax purposes of foreign entities (such as partnerships, trusts and unit trusts)
- tax advice, preparation of agreements, and other services for the launch of Japanese business by foreign enterprises and the incorporation of Japanese branches of foreign corporations

Financing transactions

- advice on leasing and financing transactions regarding aircraft and sea vessels
- review of statements related to taxation matters in various disclosure documents
- advice and preparation of memorandums regarding the taxation of stock acquisition rights
- preparation of memorandums regarding insurance instruments

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- tax advice on various types of hybrid securities
- preparation of memorandums regarding the structures of foreign real estate investments

General tax consultation

- tax advice on management instructions to foreign subsidiaries
- tax advice on the interpretation of cross-border service agreements (secondments)
- tax advice on the interpretation of stock option agreements
- preparation of memorandums, and representing clients in consultations with tax authorities, with respect to the waiver of debts of group subsidiaries
- representing clients in consultations with tax authorities regarding financial instruments
- representing clients in consultations with tax authorities regarding taxation matters for foreign investment trusts in Japan
- tax advice, and representing clients in a consultations with tax authorities, regarding consumption tax and customs duties imposed on the import of goods from overseas
- representing clients in relation to withholding tax issues

Tax Investigations

- legal relationships under private law concerning cross-border financial transactions
- taxation matters related to cross-border corporate reorganization
- taxation matters related to favorable issuance by an overseas subsidiary to its parent company
- consumption tax related to service agreements
- periods of applicability for tax treaties
- waiver of debts in connection with corporate reorganizations
- income classification (such as the distinction between employment income and business income, and employment income and retirement income) under the income tax law
- ownership of shares



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- amounts to be borne by foreign subsidiaries for secondments
- scope of authority to inquire and inspect in tax investigations
- preparation of memorandums regarding cross-border transactions within a group
- inheritance tax and gift tax matters
- application of CFC rules to a foreign subsidiary which engages in captive insurance business

Tax Disputes

Tax disputes involving the following issues:

- voluntary partnerships (*nin'i kumiai*) (as known as the Finance Lease case)
- the ownership of program copyrights
- CFC rules
- contributions to foreign affiliated parties
- the application of the Act on Special Measures Concerning Taxation to transfers of real property
- depreciated assets
- corporate reorganizations
- application of anti-avoidance rule for reorganizations
- income classification of discharged debts
- relationship between accounting and tax law
- settlement received in connection with a share purchase
- application of input tax credit of consumption tax for purchases of buildings for residential lease
- fair value of business which was transferred through reorganization transaction
- economic substance of a real estate transaction
- filing of objections related to local taxes
- tax consolidation
- inheritance tax
- fair value of class stock (as known as the Sazaby League case)

Awards and Rankings

Featured below are just some of the many awards and industry-related rankings received by this practice group and its attorneys.



Chambers Asia Pacific 2024

Mori Hamada & Matsumoto is ranked in Band 1 in the Tax area in Japan, and the following lawyers are evaluated highly by Chambers Asia Pacific 2024.

Tax
Band 1

Atsushi Oishi

Band 3

Makoto Sakai
Hiroyuki Kurihara

Up and Coming
Hiroshi Oyama



The Legal 500 Asia Pacific 2024

Mori Hamada & Matsumoto is ranked in Tier 1 in the Tax area in Japan, and the following lawyers are evaluated highly by The Legal 500 Asia Pacific 2024.

Tax
Hall of Fame

Atsushi Oishi

Leading Individuals
Makoto Sakai

Next Generation Partners
Hiroshi Oyama
Hiroyuki Kurihara

"Chambers" is a ranking survey conducted by Chambers & Partners to evaluate law firms and lawyers across the globe, based on interviews with their clients and details of legal matters. Of more than 20,000 in-house lawyers surveyed by International In-house Counsel Journal, 51% answered that Chambers & Partners was the resource they used most often when searching for evaluations of law firms and lawyers.

asialaw 2023-24

Mori Hamada & Matsumoto is selected as one of the "Outstanding" firms, and is highly evaluated in 21 practice areas and 21 industry sectors including the area of Tax. In the area of Tax, the following lawyer is selected as "Distinguished Practitioner."

Atsushi Oishi

ALB Japan Law Awards

Mori Hamada & Matsumoto earned the "Tax and Trusts Law Firm of the Year" award at the ALB Japan Law Awards organized by Asian Legal Business (ALB), an internationally-recognized legal journal and a part of the Thompson Reuters Group, for four years in a row since 2016 and in 2021.

The 2024 edition of The Best Lawyers in Japan™

The firm has 152 lawyers selected as The Best Lawyers in Japan™ and 55 lawyers selected as Best Lawyers: Ones to Watch in Japan™ in a variety of areas, including the members of our Tax Practice Group listed below.

Best Lawyers

Tax Law

Kazuhiro Kanamaru, Atsushi Oishi, Makoto Sakai,
Hiroshi Oyama, Hiroyuki Kurihara

Litigation

Kazuhiro Kanamaru, Atsunori Nobukuni

Corporate and Mergers and Acquisitions Law

Atsushi Oishi, Yoshihiro Kojima, Atsunori Nobukuni

Ones to Watch

Tax Law

Yoshiko Yamakawa

Corporate and Mergers and Acquisitions Law

Yu Takahashi, Takahiro Iijima

Capital Markets Law

Keiichi Bando
