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Introduction of “My Number” System in Japan

On 5 October 2015 the government of Japan has started to distribute a 12-digit personal social insurance and tax number known as “my number” to all Japanese citizens and foreigners residing in Japan for more than three months. The introduction of “my number” is aimed to ensure the bundling, administration, coordination and exchange of information in the areas of (i) social insurance, (ii) tax and (iii) disaster prevention to inter alia prevent tax evasion and illicit claims for pension and other statutory benefits. The government plans to gradually integrate the “my number” system in further information exchange processes, e.g. by introducing a mandatory link of “my number” to the bank account of each holder of the number from 2021.

This Newsletter shall provide a first overview of the measures that need to be taken by companies with respect to the handling of “my number”.

1. General Handling of “My Number” in Companies

Effective as of 1 January 2016, “my number” is required for the enrollment of employees in the national health insurance, the national pension insurance and for the preparation of the income withholding tax certificates of employees. The employer is required to collect “my number” from all its employees, including part-time and fixed-term employees, prior to the submission deadline of the respective documents for withholding tax, health insurance, pension insurance, unemployment insurance etc.

If an employee refuses to submit his/her “my number” to the company, it is recommendable to record the refusal in writing, in particular in order to provide evidence for the tax authorities and social insurance provider when submitting tax / social insurance documents relating to such employee without the required “my number” information. Please note that it is generally neither legally feasible to penalize an employee for not submitting his/her “my number” information to the company nor is it recommendable to withhold the salary payment to such employee.

If withholding tax must be deducted from service fees payable to independent contractors, companies are required to acquire the “my number” information also from such independent contractors.

When acquiring information related to “my number”, a legally permitted purpose of use of the information to be acquired needs to be expressly specified and individually notified or publicly announced to the employees. Since it is in principle not feasible to amend the purpose of use retroactively, the wording of the purpose of use must be carefully considered prior to its publication. The purpose of use as well as a general obligation of employees to provide “my number” information may for example be stipulated in employment contracts, the employer’s rules of employment and/or applicable privacy/data protection policies.

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In addition, it is recommendable for employers to include in employment agreements or applicable company regulations, such as the company's rules of employment, a catalogue of disciplinary actions that may be taken by the employer in the event of abuse or mishandling of "my number" information by employees responsible for handling this information.

Since amendments to existing employment agreements and rules of employment in principle require the agreement of the employees or of the representative of the employees (or trade union, if existing), it is recommendable for employers to prepare an acknowledgment notice to be signed by the employer and all employees or, alternatively, the employee representative representing the majority of the employees (or trade union, if existing).

Except in the cases explicitly stipulated by the law as described above, the request of information related to "my number" and the use of such information is prohibited, even if the person concerned agrees to provide such information voluntarily.

Once "my number" information has been obtained, it is necessary to internally control and protect such information against data leakage, loss and destruction. The measures recommended under the guidelines of the Ministry of Internal Affairs and Communications to be implemented include the following:

a) Establishment of company-internal rules for the adequate use of "my number"

Companies are advised to establish company-internal basic guidelines and information handling rules for the adequate handling of "my number".

b) HR-related and organizational measures

It is recommendable for companies to designate responsible person(s) in charge with the handling of "my number" information and to establish measures to prevent the use by other persons. In addition, employees need to be educated and supervised with respect to the issues related to "my number", e.g. in internal trainings and seminars. It is also recommendable to update confidentiality obligations of employees if these obligations do not yet cover "my number" related information.

c) Physical and technical measures related to the safety of "my number"

Information related to "my number" shall be kept in a secured place, e.g. in safes or cabinets that can be locked, and the access shall be strictly limited and controlled; in addition, the anti-virus software used in the company shall be on the latest standard.

2. Legal Consequences of Abuse or Mishandling

In the case of an intentional leakage of "my number" information by an employee, penal sanctions, including monetary fines of up to JPY 2,000,000 or imprisonment of up to four years, may be imposed on the employer or employee. If "my number" related information is leaked due to negligent or intentional misconduct of the employer, the employer may also be subject to damage compensation claims by the person whose information was leaked, and/or administrative countermeasures by the authorities. In addition, the reputation of the employer may be affected if the public becomes aware of a data leakage.

3. Measures to be taken in case of Out-Sourcing of Services and Transfer of "My Number" Information

If the preparation of procedural documents and/or payment of social insurance, taxes, etc. has been outsourced to external service providers, such as payroll service providers, the handling of the information related to "my number" by the service provider needs to be supervised. To this end, it is recommendable to conclude a written service agreement, including at least (i) a sufficient confidentiality obligation, (ii) a limitation of the use of the information to the purpose for which the information has been obtained, (iii) an obligation to return or delete the information after the end of the contractual relationship and, if possible, (iv) an indemnification obligation of the service provider in the event of a data leakage. If a written service agreement has already been concluded, it is recommendable to confirm the content and, if necessary, to update the agreement.

Foreign subsidiaries in Japan should in particular give attention to the fact that while a transfer of "my number" information to an external service provider is generally permitted, companies are not allowed to transfer "my number" information of its employees to any third party, including its parent company. It may become in practice a typical pitfall that "my number" information included in the personnel files will be unintentionally transferred when staff information is requested by the headquarters. In order to avoid an unintentional and accidental transfer of "my number" information and to ease the deletion of such information, e.g. if an employee leaves the company, it is recommendable to separately save and store "my number" information from other personal information of employees.

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