MONGOLIA GENERAL DEPARTMENT OF TAXATION

THE PROJECT FOR THE ENHANCING TAX COLLECTION OPERATION AND INTERNATIONAL TAX ISSUES OF MONGOLIAN TAX ADMINISTRATION Phase 2 The Project Completion Report Separate Volume Technical Cooperation Deliverables

March 2020

Japan International Cooperation Agency (JICA)

KINZAI Institute for Financial Affairs, Inc.

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Technical cooperation deliverables

Baseline study report

BASELINE STUDY REPORT FOR THE PROJECT TO BE IMPLEMENTED BY GENERAL TAXATION DEPARTMENT AND JAPAN INTERNATIONAL COOPERATION AGENCY

ULAANBAATAR 2017

INTRODUCTION

This baseline study aims to define the current situation of international taxation system and tax collection procedures of the General Department of Taxation (GDT).

GDT organized the first meeting with research team on 15th of February, 2015. On this meeting, Mr. Badral.B, the director of GDT Tax Administration and Cooperation Department (TACD), and Ms. Narmandakh.S (JICA) discussed and decided on the action plan and scope of work with the research team.

According to the approved action plan, the research team started the field work on 3rd of March, 2017. Research team conducted meetings with Budget Revenue Department of the Ministry of Finance (MoF), Tax Debt Call Center (TDCC) of the GDT Tax Service Center (TSC), GDT Tax Revenue Department (TRD), Tax Offices of Songinokhairkhan and Chingeltei districts. This report is written based on meeting protocols with these departments and information from the TRD and GDT Information and Statistics Department.

Baseline study is conducted by the research team of the National University of Mongolia (NUM). Dr. Davaadorj.Ts, the director of Japan-Mongolia Human Resource Development Center, worked as a team leader. Dr. Altantsetseg.B, associate professor of the Economics Department of the NUM, Dr. Soyolmaa.B, associate professor of the Economics Department of the NUM, Ms. Bayarmaa.D, senior lecturer of the Economics Department of the NUM worked as researchers.

Report consists of three parts in accordance with the scope of work in the ToR.

OUTCOME 1: PROVISION OF MIDDLE AND ADVANCED LEVEL KNOWLEDGE AND PRACTICAL SKILLS ON INTERNATIONAL TAXATION

This section is written based on notes from the interviews with heads and staffs of departments and divisions in GDT and a survey from the trainees, who participated in the trainings of JICA project.

It has the following four parts.

1.1.The existing curricula of the training on international taxation, teaching materials, current work of the trainees, average score of the trainees

Trainings organized by the training center

In the framework of developing and revising the curricula on the international taxation, the existing curriculum was reviewed¹ on August, 2014 and was used in general staff training. General staff training is 240-hour training and out of which 2 hours are devoted to the topic on basic concepts of international taxation and relief against double taxation general (Appendix A1.1). In total, 60 officers participated in this training.

In 2015, the training center organized 5 trainings and totally, 213 staffs participated in. One of these trainings was a 40-hour basic training on international taxation for general staff. The curriculum of the training was developed in cooperation with project consultants, Ishiguro Hideaki and Kodera Toshinari and they taught courses with instructors of the training center (Appendix A1.2).

In 2016, the curriculum was approved after the third training. Using this curriculum, two basic trainings in international taxation were organized in assistance with JICA consultants in that year (AppendixA1.3). Overall 90 staffs participated in the trainings. From those participants, 45 staffs took an exam and their average score was 65. According to the interviews with the head of the training center, an exam had not been taken previously at the end of the domestic trainings.

Training	Total hours	Out of which: hours related to topic on international taxation	Period	Number of participa nts
General staff training	240	2	2014.10.01-11.12	60
General staff training on international taxation- basic level 1	40	40	2015.8.17-8.21	213
General staff training	240	2	4 times in 2015	
General staff training on international taxation- basic level 2	40	40	2016.3.07-3.11	45/50

Table 1.1 The trainings organized by the training center

¹ The project completion report: Year 2

General staff training on international	40	40	2016.9.19-9.23		
taxation- basic level 3					

Source: GDT, Training Center

Trainings organized by JICA

Within the framework of the Project with JICA, the human resource development plan was developed and the implementation plan of trainings was approved. In accordance with the plan to prepare the qualified core staffs on international taxation, the basic trainings were organized once in Japan and once in Mongolia, while the intermediate level trainings were carried out once in Japan and 3 times in Mongolia.

In addition to the planned trainings mentioned above, trainings on themes of "international taxation", "information exchange" and "foreign transaction examination methods" were carried out, based on a request from the GDT.

	Training	Period	Number of participants	Target group
1	Training in Japan (1) "Introduction to International Taxation"	2014.2.16-3.01	22	Core staffs
2	International taxation training for senior officials in the GDT	2014.4.09-4.11	27	Head of departments in GDT and district tax units
3	Training by dispatched NTA officials (1) "Information exchange"	2014.5.19-5.21	40	NTA officials
4	Core staff training (1) (Entry-level, follow-up)	2014.6.22-7.04	21	Core staffs
5	Core staff training (2) (Preliminary training before dispatch to Japan)	2014.11.17-11.28	40	Core staffs
6	Training in Japan (2) "Intermediate international taxation"	2015.2.16-2.27	21	Core staffs
7	Core staff training (3) (Intermediate, follow-up)	2015.4.06-4.10	28	Core staffs
8	Core staff training (4) (OECD & UN model tax conventions)	2016.2.29-3.04	35	Core staffs
9	Training by dispatched NTA officials (2) "Foreign Transaction Investigation Methods"	2016.6.21-6.23	53	NTA officials
10	Core staff peer review	2016.9.27	29	

 Table 1.2 Training organized by JICA

Source: "The project for the enhancing tax collection operation and international tax issues of Mongolia tax administration: project completion report Year 2" Mongolia, General Department of Taxation, October 2016

Currently, basic and intermediate trainings have been carried out. In future, there are two types of training needs (comments from the interviews): first, trainings for general staffs, especially trainings in international taxation to improve the knowledge of inspectors, who are responsible for tax audit; and second, advanced or specialized trainings for the qualified core staffs.

Training materials

During the trainings in international taxation carried out in Japan and Mongolia, 20-30 training materials were developed² and 4-5 books by slides and presentations prepared for these trainings are now used as a training material in the training center (AppendixA.1.4). Moreover, books, terminologies and other materials were translated and published for the needs of work and training. These materials were disseminated to the training center and the core staffs participated in the Project trainings. Based on materials above, the training center developed and approved the curricula of basic, intermediate and advanced trainings in international taxation, which are planned to be organized in 2017 (AppendixA.1.5).

As for the training center, training materials, books and handbooks were provided sufficiently, whereas there is a lack of these materials for other tax offices, departments and staffs³. For instance, tax inspectors in Songinokhairkhan district mentioned that they do not have any materials and books on international taxation⁴.

In order to solve lack of insufficient materials and books, the training center requested from JICA to locate these materials on online library of the training center⁵. Moreover, the core staffs and the head of the training center expressed their opinion that they need a book written by Mongolian cases of audit on international taxation. During the interviews with the core staffs, there was a suggestion that a book, which collects real cases of audit in international taxation in Mongolia and analyzes these cases, will be more effective to trainings and their works.

Current work of the core staffs

The training center conducted the survey on current jobs of 42 inspectors including 2 supervisors, out of which 12 people are working at the GDT and 20 people at the affiliated agencies of GDT. The remaining 10 people are currently working at organizations other than tax offices or are not working with some reasons, such as studying abroad, maternity leaves and so on.

As of 20 inspectors working in the affiliated units of the GDT, 4 inspectors work at places, where international taxation is the main duty of their jobs. For example, 2 inspectors work at International Taxation Division of State Budget Revenue Department, 1 staff at Division of Legislation and 1 staff at Audit Division. The remaining 16 inspectors are at District and

² The project completion report: Year 2

³ Meeting note with the head of the training center

⁴ Meeting note with staffs at District Tax Office of Songinokhairkhan

⁵ Meeting note with the head of the training center

Aimag Tax Offices. 5 inspectors work in rural area, out of which 1 inspector is at Orkhon aimag, 1 staff at Darkhan-Uul, 1 staff at Umnugobi and 2 staffs at Tuv aimag.

During the interviews, the core staffs and the tax office staffs claimed that knowledge and information on international taxation are necessary for inspectors working at audit divisions of district and aimag offices.

Number of core staffs who attended trainings of the Project and average score of trainees

According to the information from Tax Administration and Cooperation Department, 22 inspectors (core staffs) attended the first training in Japan and after that, the number of core staffs had been increased up to 40 people through the selection process. These 40 core staffs attended two domestic trainings in 2014 and after these trainings they took an exam on international taxation. Purpose of the exam was to select 20 core staffs for next training in Japan. Totally, 33 inspectors took an exam and 7 inspectors could not take it. Two third of those core staffs got a 50 or higher score and an average score was 56.8 (from 100 score). Depending on the results of the exam and an interview, the core staffs to be participated in the second training in Japan were selected.

1.2. Application of knowledge obtained from the trainings of the Project

The research team conducted a survey among the core staffs and organized an interview with them. 15 core staffs participated in both the survey and the interview and 13 of them were female. The average age of the participants was 37. With respect to education levels, two third of them had a master's or higher degree, while one third had a bachelor degree. They have at least 5 years of work experience at tax offices and the maximum is 22 years. However, two third of them are working at their current positions for one year or less.

Most of them (12 participants) responded that the topics and contents of the training were fully consistent and compatible with their jobs and future working plans, while 3 persons said that contents were somewhat relevant. All participants in the survey had encountered problems on international taxation at their work. For example, most of them were related to the contract of double taxation, while some of them were related to transfer pricing and information exchange. When they were asked about how often they have applied their knowledge and skills obtained from the Project trainings to their work, 6 participants responded "sometimes" and 9 persons gave a response "several times" or "often".

The majority of the survey participants (13 staffs) solved specific problems related to international taxation and gave guidance to someone using their knowledge and skills taught throughout the trainings. When they encounter a problem related to international taxation, most of them look at their materials distributed during the trainings (10 participants), apply what they studied from the trainings (8 participants) and use other books, material and laws (9 participants). In last 3 years, they participated in 6-7 trainings on average. 11 participants responded that they have the necessities to attend trainings in international taxation.

1.3. Human Resources Development Plan

The strategies of the GDT associated with human resources development plan related to international taxation are determined within the framework of the documents "Human resource policy of national tax departments" approved under a Decree 983 of a Chair of the GDT in December 13, 2013 and "Training and development programs of staffs of Mongolian tax offices" approved under a Decree A/11 in January 11, 2017. The issues of human resources related to international taxation are not directly stated in these documents. However, the program approved in 2017 states that topics and contents of trainings will be developed based on researches, demands and requests. According to the survey conducted by the training center in 2017, the demands of trainings in international taxation were the highest.

As stated by the Public Administration and Management Department, the human resources specialized in international taxation are insufficient. For instance, the number of qualified inspectors in this field is less than 10 percent of total inspectors. Moreover, the department claims that movements of staff who are trained in international taxation (for example, the core staffs changed their jobs to private sectors or other tax offices) make the problem of human resources more difficult.

During the interviews, all tax offices, divisions and departments mentioned that there is a lack of inspectors specialized in international taxation and there is an urgent need to train their staffs in near future. For example, the number of teachers in the training center is not sufficient. When one of teachers go to rural area to carry out the trainings, there is replacement teacher to teach the subject on international taxation. Moreover, the training center needs a teacher to translate materials into Mongolian because it has necessities to study new issues, recent approaches to international taxations, and current changes in contracts and agreements (regardless of available materials in the training center).

In Mineral and International Taxation Division of the State Budget Revenue and Audit Department, there are two inspectors specialized in international taxation. However, the division sent a request to their directors to increase the number of their inspectors related to international taxation up to 4^6 . Besides, the districts' tax offices have a need to train their inspectors in international taxation. Also, they mentioned that they do not have any materials and handbooks on international taxation⁷.

Furthermore, the core staffs and training center suggested having a team consisting of specialized inspectors. As a decision is made by a team after discussions, inspectors would be more confident on their decisions. For one person, there is a tendency to hesitate to make a decision because another part, such as tax payers would oppose and not accept the decisions and acts, especially when they have to pay. In this case, it is likely to feel the lack of power

⁶ Document from Mineral and International Taxation Division of State Budget Revenues Department, Jan 9, 2017

⁷ Meeting note with staffs at District Tax Offices of Chingeltei and Songinokhairkhan

for one person⁸. Moreover, the decisions on problems and the result of the trainings would be more effective as the discussions and workshops on real cases from inspectors are organized⁹.

The training center is planning to organize the following work with help of a team consisting of 4-5 inspectors specialized in international training: a) to do a research on how the international taxation develops in Mongolia or b) to prepare comments on how to analyze, explain and solve cases of audit related to international taxation.

1.4. Budget of the training and capacity to continue

In 2017, GDT allocated 175 million MNT to trainings and training related costs¹⁰ and a small fraction of it spends to the trainings in international taxation.

In the process to prepare the qualified core staffs in international taxation, 3 teachers of the trainings center were prepared as an instructor. However, these teachers used to work at the training center in short period and they are now working at other departments of tax offices. Fortunately, the head of the training center and one of its teachers participated in the trainings of the Project and thus they have a capacity to teach the subjects on international taxation¹¹. Although human resource of the training center is insufficient, the training center supposes that it has a potential to carry out the trainings in international taxation for general staff of tax offices with current capacity.

⁸ Meeting note with core staffs

⁹ Meeting note with the head of the training center

¹⁰ Information from Public Administration Management Department

¹¹ Meeting note with the head of the training center

OUTCOME 2. DEVELOPMENT OF THE FOUNDATION OF INTERNATIONAL TAXATION

This part of the report is based on meeting protocols from the meetings with the Budget Revenue Department of the Ministry of Finance (MoF), GDT Tax Administration and Cooperation Department (TACD), International Taxation Division of the GDT State Budget Revenue and Audit Department (SBRAD) and Tax Offices of Chingeltei and Songinokhairkhan districts. Moreover, international taxation site on the GDT website, report on the revenue from international taxation from the international taxation division of SBRAD, study on double tax treaties from the MoF website and other related tax laws.

This part is written in accordance with 6 indicators.

2.1 GDT international taxation administration system, current situation of international taxation examination

During the above mentioned meetings, all parties emphasized that legal environment and technical capacity are not developed good enough to implement the international taxation in Mongolia.

Representatives from the GDT told that international taxation issues are new and development of its foundation is at the beginning stage. Although, some of the related staff had understanding about the international taxation at moderate level, it needs to be deepened and more knowledge and experience are in need. Currently, GDT TACD and international tax division of SBRAD conducted some researches on international taxation and developed some necessary procedures. For example, international tax division of SBRAD conducted the baseline study of corporations and international practices on international taxation¹².

GDT TACD developed manuals for transfer pricing, international taxation examination and exchange of information under the guidance of project consultants. Furthermore, GDT developed draft amendments to the General Tax Law, Corporate Tax Law, Personal Income Tax Law and reflected necessary basic principles to implement these manuals. Also, GDT defined tax terminology related to international taxation. When necessary, GDT staff use manuals and books provided during the project implementation¹³.

MoF officials emphasized that legal environment is not developed enough for international taxation it is necessary to reform the tax system in Mongolia. Otherwise, it is not possible to collect the taxes. Therefore, MoF closely cooperated on the drafted amendments to tax laws with GDT. MoF officials considered these amendments good enough¹⁴.

MoF officials emphasized that they need to study the current situation and then do some policy reform to fix the problems in implementation of international taxation. For example,

¹² Meeting noteof international tax division.

¹³ Meeting notewith TACD.

¹⁴Meeting notewith MoF.

some terminology related to correlation and double tax treaties are in the law. But MoF officials told that they need to know the tax loopholes. MoF work with GDT on the cases related to international taxation and work together to draft the necessary law amendments. Cases faced by tax inspectors and tax audit inspectors are needed to be discussed and reflected on the law. But it is impossible to cover all cases faced by all more than 1800 inspectors. GDT needs to have a procedure on this¹⁵.

Tax inspectors at district tax offices refer to the GDT Tax Audit and Methodology Department (TAMD) when they have a case of international taxation¹⁶. On the other hand, there is no tax inspectors who are specialized in international taxation in that department. Furthermore, inspectors of the department do not have specified duty to be in charge of international taxation issue according to their job description¹⁷.

During the meeting with staff of TACD and international taxation division of SBRAD, they noted that they need an automatic system to extract data required for researches on international taxation from the database of GDT. For example, the international tax division currently faces problem of extracting data on corporations from the main database of GDT to conduct the baseline study that is requested from the TACD. Furthermore, TACD staff needs to have access to database on the multinational corporations such as ORBIS.

During the project implementation, international taxation understanding of the GDT has improved and it established a unit in the SBRAD and TACD is in charge of international taxation policy issues. Three of the main duties of TACD are related to international taxation. There are 4 tax inspectors who are in charge of international taxation in TACD. They are responsible for transfer price, international taxation research, BEPS activity, double tax treaties issues, exchange of information. Newly established unit in SBRAD has 2 tax inspectors. Currently, they are mainly conducting researches on international taxation.

The GDT Tax Audit and Methodology Department and Legal Issue Department do not have staff that is responsible for international taxation issue.

2.2 Current situation of legal environment for implementation of the international taxation; draft amendments in tax laws related to the issue

TACD developed manuals for transfer pricing, tax audit, exchange of information. MoF approved the manual for transfer pricing in December 2015. But these manuals are difficult to be used as the main concepts related to the issues are not defined in the general tax law, corporate tax law and personal tax law. For example, according to the rule the MoF is in charge of approving the manual so did for the transfer pricing manual. But the manual cannot be used due to the absence of some concepts in the law. Ministry of Law and Domestic Affairs did not register the transfer pricing manual as a common rule because some

¹⁵ Meeting notewith MoF.

¹⁶ Meeting notewith tax offices of Chingeltei and Songinokhairkhan district.

¹⁷ Meeting notewith international taxation division.

terminology used in international practice are not defined in the law such as mutual agreement procedure and comparability analysis. GDT cannot ask tax payers to follow the rule as manual is not registered in the common rue¹⁸.

TACD and MoF developed proposal of law amendments to general tax law, corporate tax law and personal tax law in a way to define the main concepts needs to be in these laws to make the manuals related to international taxation efficient. For example, some terminology related to international taxation are defined in the proposed amendment to the corporate tax law. Current corporate tax law is amended in June 2006. Some concepts inserted in the proposed amendments are "Income generated in Mongolia" and "Mongolian-Source Income". There are 10 different types of income included in the latter. Furthermore, "related parties" are not defined in detail in the current law and they are explained in detail in the proposed amendment. Comparability analysis is also in the proposed amendment. There is a whole part about the permanent establishment in the amendment.

Current general tax law is approved in May, 2008. There are many new concepts related to international taxation according to new proposed project of the general tax law. Examples are "transfer price", "principle of transfer pricing", "related parties", "comparability adjustments".

A tax reform is planned if the Government of Mongolia is agreed with IMF on loan package as of October, 2017¹⁹.

2.3 International tax avoidance, prevention of double taxation, transfer pricing, foreign tax relief, current situation of permanent establishment (PE) and measurement taken on the issue

Currently, issue of transfer pricing is very challenging. In particular, there are many arguments emerged with mining companies related to transfer pricing. Government sets prices for products of mining companies and there are 2-3 different types of prices for one product. Transfer pricing for royalties is not following the international practice.

TACD said that prices for main mining products can be compared by market prices but prices related to technical services are difficult to compare due to the absence of related concepts in the main tax laws.

MoF officials highly emphasized that to develop the foundation of international taxation system, main principles need to be defined in the main laws²⁰. Currently, a technical project on transfer price is being implemented in order to improve the capacity of mining sector with support from IMF and the Government of Canada²¹. Legal environment is not the only problem to be solved for the transfer price but also database is important to be developed.

¹⁸ Meeting protocols with TACD and MoF.

¹⁹ Meeting notewith MoF.

²⁰ Meeting notewith TACD.

²¹ Meeting notewith MoF.

Currently, it is not clear how to build the database, how to update the database, who should have access to the database²².

MoF officials emphasized that there are problems need to be solved for PE and that would be the main part of the reform in double tax treaties. For example, according to the double tax treaties, PE of the foreign countries have too long period to be located in Mongolia. On the other hand, PEs usually stay for shorter than the given period and go out of the country without paying tax. This problem cannot be solved without revising the treaties. Moreover, big mining projects pay very low amount of tax using tax loopholes. Major mining companies do base erosion by shifting their profits between different reserves²³.

Currently, there are 11 registered PEs. District tax offices are in charge of PE registration and supervision. According to the GDT rule, PEs of the countries with double tax agreement are being registered and PEs of the countries without such agreement are not being registered²⁴.

PE related issues are only at study level at the GDT. International tax division of SBRAD is conducting international practices on how to define profits of PE and how to tax them. One big problem with PE is its registration. PEs are registered only at tax offices and according to the law it is not possible to register them at State Registration Authority²⁵.

There is no common understanding of PE concept at district level. District tax offices face challenges to gather updated correct registration information of PEs. Registration database needs to be updated and district tax offices need to have access to the database. For example, there are 4 PE registered at Chingeltei district. But tax inspectors cannot reach them and cannot clarify if they are in the registration or not.

Registered aimag/district	No	Type of tax payer	Registered year		
Bayan-Ulgii	1	Organization	2013		
Bayanzurkh, UB	2	Organization	2014-2015		
Sukhbaatar, UB	2	Organization	2016		
Khan-Uul, UB	1	Organization	2016		
Chingetei, UB	4	Organization	2014-2016		
Total	10				

Table 2.1 Registered	permanent establishments
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Source: PE registration information gathered from TACD

See appendix A2.1 for statistics on international taxation on money transferred to foreign countries from corporate registered at SBRAD.

²² Meeting notewith MoF.

²³ Meeting notewith MoF.

²⁴ Meeting notewith TACD.

²⁵ Meeting notewith international taxation division.

2.4 GDT human resource and structure of international taxation; cooperation with other units (cooperation with Tax Audit and Methodology Department, Legal Issue Department, MoF etc.,)

According to the GDT structure, strategic activity, structural change program approved by Finance Minister, international taxation policy is defined but not the implementation of it. It is stated in the first objective of strategic activity GDT must; *Conduct research on international taxation and implementation of tax laws, propose reform and development plan for the legal environment and cooperate with the policymakers (section 2.5.1.1).*

According to the approved structure, GDT has 9 departments out of which TACD has many functions for international taxation policy. In these functions, cooperation with MoF, other foreign and domestic stakeholders is included (TACD functions section 3.3.3.4, section 3.3.3.7, section 3.3.3.9, section 3.3.3.11, section 3.3.3.12). TACD is the main unit to cooperate with the MoF on the international taxation policy.

Only one unit which belongs to the SBRAD is responsible for implementation of international taxation. In section 3.4.4.9 of the structural program, TACD should provide policy guidance for this unit.

In general, TACD has 3 main functions, out of which one is in line of international taxation. In TACD, there are 4 tax inspectors who are responsible for international taxation. One inspector is responsible for transfer pricing, one is responsible for research on international taxation, one is responsible for BEPS and study of international practice of international taxation and the other one is responsible for double tax treaties²⁶.

Newly established international taxation division has two main functions including research on international taxation and ensure the implementation of international taxation laws and agreements (double tax treaties, investment agreements) at the SBRAD. This unit has 2 inspectors responsible for implementation of these functions.

MoF has one official and one consultant who are responsible for international taxation. Number of staff responsible for international taxation is not enough for MoF and the GDT new division. Furthermore, there is no staff responsible for international taxation at district tax offices. It has been highlighted that staff is needed at GDT TAMD, Legal Issue Department, tax audit units of district tax offices during the meetings. Information database issue is needed to be solved at district tax offices.

According to GDT structure approved by Finance Minister, there is no function related to international taxation at TAMD and Legal Issue Department which makes the issue difficult at implementation stage²⁷. Implementation functions of international taxation need to be defined clearly in job description of responsible staff of GDT²⁸.

²⁶ Meeting notewith TACD.

²⁷ Meeting notewith international taxation division.

²⁸ Meeting notewith international taxation division.

2.5 GDT's plan to use BEPS actions set out from OECD/G20 in domestic system and double tax treaties

GDT has not developed the plan on how to use BEPS actions in its own system yet. Currently, GDT organized workshop for its staff to introduce the BEPS action plans.

2.6 Current situation of prevention of double taxation and double tax treaties

The Government of Mongolia has valid double tax treaties with 25 countries. They have been signed and became efficient in different periods, from 1993 to 2005. MoF and TACD officials mentioned that some agreements need to be updated.

The number of countries with double tax agreement was 29 and the government terminated 4 treaties with Luxembourg, Kuwait, United Arab Emirates and Netherlands between 2014 and 2015²⁹. In 2012, MoF conducted comparative analysis on double tax treaties and found that agreements with these countries were not beneficial for Mongolian side. Therefore, the Government of Mongolia requested to update the treaties but terminated them as not reached mutual agreement³⁰. According to the terms and conditions set in treaties with these countries, taxes to be paid 100% for the other sides and 0% for Mongolian side. MoF sent request to update the treaties and terminated as the other side has not replied within the given period in the agreement³¹.

GDT also sent a proposal to MoF to change double tax treaties with 2 countries, which are not beneficial to Mongolian side³². In addition, MoF considers double tax treaties with almost 10 countries need to be changed. But it will be discussed with the government and other stakeholders. Currently, MoF asked for advice from the Ministry of Foreign Affairs³³.

²⁹ GDT website: <u>http://www.mta.mn/c/view/11957</u>

³⁰Comparative analysis by MoF: <u>http://www.iltod.gov.mn/?p=2712</u>

³¹ Meeting notewith MoF.

³² Meeting notewith TACD.

³³ Meeting notewith MoF.

OUTCOME 3. FOUNDATION TAX COLLECTION IS STRENGTHENED

There are 4 parts in this section.

3.1 Tax collection system and delinquency lequidation enforcement

Main duty of the Tax Revenue Department (TRD) is revenue collection for central and local budgets and keeping revenue on targets approved by the Parliament and Citizen Representative Board. The department has a duty to collect tax revenues levied from filed tax returns and tax audits. According to the tax laws, taxable income classifications are different for central and local budget. The department has tax collection units in all 31 tax offices.

The department provides professional and methodological supervisions to the affiliated tax collection units and keeps tax payment records. TRD has 9 state tax inspectors and more than 1000 tax inspectors across all the affiliated tax collection units. Delinquency lequidation enforcement is regulated by the section 8 of the General Tax Law.³⁴

In recent years, a number of entities, filed income tax return on deductions from employees' wages, has increased. In particular, in 2013 it was 33899 and in 2016 it has increased by 19.4%, reaching 42867. Moreover, a number of small entities with fewer than 10 employees tends to grow faster. In last three years, growth rate was 28.8% and in 2016 the annual growth rate was 6%. Although, there are a large number of small entities, their share in tax revenue was 4.8% in 2016.

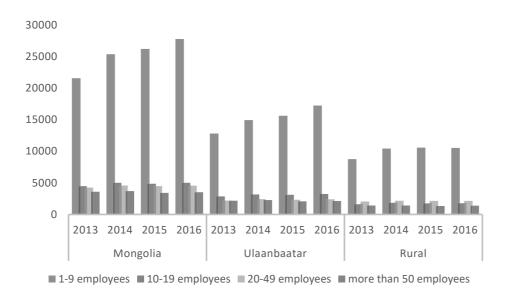


Figure 3.1 Tax paying entities, by location

Source: GDT, Information and Statistics Center

³⁴ Meeting note, Tax Revenue Department of GDT

On the other hand, there are 3508 entities with more than 50 employees in 2016 and its share in total number is 8.1%. The largest entities pay the largest share of tax revenue. Their share in 2015 and 2016 were 86.6% and 84% respectively.

	2013	2014	2015	2016			
1.5 Number of taxpaying entities							
1-9 employees	21 568	25 353	26 203	27 773			
10-19 employees	4 484	5 017	4 868	5 014			
20-49 employees	4 245	4 589	4 469	4 556			
More than 50 employees	3 589	3 697	3 416	3 508			
1.6 Average	revenue of taxpa	aying entities, m	ln tugrug				
1-9 employees	147.4	140.0	133.2	124.2			
10-19 employees	584.3	558.1	529.9	518.5			
20-49 employees	1 048.3	1 294.4	1 089.7	1 106.2			
More than 50 employees	4 012.2	4 544.2	4 303.3	4 361.4			
1.7 Averag	ge cost of taxpay	ving entities, mln	tugrug				
1-9 employees	152.1	145.5	141.6	144.7			
10-19 employees	584.3	566.1	550.5	534.5			
20-49 employees	1 057.7	1 327.1	1 132.2	1 183.0			
More than 50 employees	4 374.5	4 652.4	4 391.1	4 332.9			
1.8 Average ta	ax payment of ta	xpaying entities	, mln tugrug				
1-9 employees	94.5	106.0	90.6	105.0			
10-19 employees	78.3	83.0	77.6	84.2			
20-49 employees	128.0	175.0	178.0	157.			
More than 50 employees	2 180.0	2 260.0	2 230.0	1 820.0			

Table 3.1 Tax paying entities

Source: GDT, Information and Statistics Center

In recent years, a number of delinquent taxpayers and the amount of delinquent taxes are both growing. According to Table 3.2-3.3, in 2015, the amount of delinquent taxes was 706.3 billion tugrug and in 2016 it has increased by 46.3%, reaching 1033.3 billion tugrug. Moreover, there is a growing trend in a number of delinquent taxpayers (duplicate across tax classification). In 2015, there were 286.2 thousand delinquent tax payers and in 2016 it has increased by 16%, reaching 333.1 thousand. Accordint to the Table 3.2, in 2015-2016 GDT authorised all enforced collection activities of delinquent tax collection procedures except auction.

Table 3.2 Delinquency Liquidation Enforcement, according to procedures mln.tug

	himmer					
	Past Fiscal Year		Current Fiscal Year		Total	
	2015	2016	2015	2016	2015	2016

1 Tax debt worth	410 586.2	680 551.4	295 689.3	352 748.8	706 275.5	1 033 300.2		
2 Number of delinquent taxpayers	87 733	82 654	198 429	250 477	286 162	333 131		
3 Delinquent Tax Collection Procedures								
3.1 Forced withdrawal of delinquent tax from bank accounts								
Taxpayers	5 019	3 507	2 950	2 054	7 969	5 561		
Debt amount	131 867.3	124 476.2	87 894.4	57 083.7	219 761.7	181 559.9		
3.2 Collection from asset	ts, salaries, etc.	•	I		I			
Taxpayers	69	30	104	16	173	46		
Debt amount	2 010.6	145.6	878.6	14.1	2 889.2	159.6		
3.3 Holding assets as col	lateral	I	I	·	I			
Taxpayers	77	28	40	6	117	34		
Debt amount	4 373.9	2 145.6	1 361.2	134.7	5 735.1	2 280.3		
3.4 Public sale of asset th	nrough auction	,	1		1			
Taxpayers	0	0	0	0	0	0		
Debt amount	0	0	0	0	0	0		
3.5 Delivering notification	ons							
Taxpayers	14 612	12 873	10 383	9 172	24 995	22 045		
Debt amount	245 593.5	379 093.4	187 005.8	198 848.2	432 599.2	577 941.6		
3.6 Sequestration of asse	ets	1	1		1			
Taxpayers	273	62	21	18	294	80		
Debt amount	19 464.2	1 072.3	1 309.8	569.3	20 774.0	1 641.6		
3.7 Filing court claims			1		1			
Taxpayers	697	401	84	49	781	450		
Debt amount	109 903.3	20 328.2	2 641.2	423.7	112 544.5	20 751.9		

Source: GDT, Tax Revenue Department

In 2016, a number of enforced collection actions, implemented according to the tax collection and delinquent tax collection procedures stated in the General Tax Law, has fallen. In 2015, enforced collection actions were taken for 6135 delinquent taxpayers. In 2016 it has decreased by 34% to 4028. In terms of delinquent amount, in 2015, enforced collection actions were taken for delinquent tax amount of 513.2 billion tugrug. In 2016, the actions were taken for delinquent tax amount of 527.3 billion tugrug. In 2016, a number of enforced collection actions (Table 3.2) has decreased across all delinquent tax collection procedures.

Table 3.3	Delinquency	Liquidation	Enforcement	(actual	revenue	contribution	to
budget), acc	ording to deli	nquency proc	eedings			mln.tu	g

budget), according to definducity proceedings						
Beginning of year	Current fiscal year	Current fiscal year Paid				
balance	tax dues		balance			
781 416.0	2 811 824.3	2 886 9	64.8 706 275.5			
706 275.5	3 024 127.8	2 697 1	03.1 1 033 300.2			
3 Delinquent Tax Collection Procedures						
Past Fiscal Year	Current Fiscal Year Total					
	Beginning of year balance 781 416.0 706 275.5 3 Delinqu	Beginning of year balanceCurrent fiscal year tax dues781 416.02 811 824.3706 275.53 024 127.83 Delinquent Tax Collection Pr	Beginning of year balanceCurrent fiscal year tax duesPaid781 416.02 811 824.32 886 90706 275.53 024 127.82 697 10Belinquent Tax Collection Procedures			

	2015	2016	2015	2016	2015	2016
3.1 Forced with	drawal of deling					
Taxpayers	2 249	1 563	1 339	1 291	3 588	2 854
Debt amount	35 346.6	46 804.0	17 042.7	37 031.3	52 389.3	83 835.3
3.2 Collection fr	om assets, salari	es, etc.	I	I	1	
Taxpayers	32	20	84	1	139	21
Debt amount	78 0	5.9	43.5	0.2	2 194.7	6.1
3.3 Holding asso	ets as collateral			I	1	
Taxpayers	36	19	17	2	53	21
Debt amount	597.7	827.9	176.0	23.4	773.7	851.4
3.4 Public sale of	of asset through a	uction	!	I		
Taxpayers	0	0	0	0	0	0
Debt amount	0	0	0	0	0	0
3.5 Delivering n	otifications					
Taxpayers	7 338	6 006	5 693	4 627	13 031	10 633
Debt amount	52 639.5	138 441.5	52 169.1	70 704.1	104 808.7	209 145.7
3.6 Sequestratio	on of assets					
Taxpayers	67	40	6	18	73	58
Debt amount	3 101.4	1 072.3	473.7	189.0	3 575.1	1 261.3
3.7 Filing court	claims		· · · ·	i		
Taxpayers	339	91	57	19	396	110
Debt amount	23 793.6	2 856.9	204.8	10.5	23 998.4	2 867.4
Course CDT T						

Source: GDT, Tax Revenue Department

Efficiency of delinquent tax collection procedures can be measured by a comparison of delinquent tax, which were taken enforced collection actions and actual budget revenue contributions resulted from these actions. Comparison of 2015 and 2016 (of Table 3.2 and Table 3.3) presents improvements for the procedures such as forced withdrawal of delinquent tax from bank accounts, holding assets as collateral, sequestration of assets and filing court claims.

Delinquent taxpayers and delinquent amounts have both decreased for all procedures. According to officials from Revenue Collection Department and district tax divisions, this is due to economic condition in last 2 years and the government decision³⁵ to suspend enforcement actions for delinquent taxes for a certain period of time.

3.2 Current state of the Tax debt call center and urgent issues³⁶

In 2016, a tax debt call center has been established for the first time in Mongolia. Currently, the Tax Debt Call Center has 9 employees (1 senior state tax inspector, 7 state tax inspectors and 1 assistant employee). Average work experience of caller inspectors (average age 34, 1 male and 6 females) is more than 5 years and mostly in the field of revenue collection.

³⁵ Government decree from a Cabinet Meeting on August 3, 2016

³⁶ Meeting note, Head of the Tax Service Center and Senior State Tax Inspector of Tax debt call center

Inspectors' workload is heavier. During the first phase of JAICA project, the center was provided with work facilities such as computers, tables and chairs. In the beginning, the center made calls for tax debts worth less than 5 million tugrug. Then it reduced the threshold to 3 million tugrug. At present, the center makes calls for tax debts worth more than 10000 tugrug and less than 1 million tugrug.

Last year, the center made calls three times for each of 6 largest districts of the capital city. Moreover, it made calls for Khovd and Bayankhongor aimags to test calls for rural areas. Activities of the center are regulated by the rule approved by the order A24 of the chairman of GDT on October 24, 2016.³⁷ Each inspector keeps their call records by entering calls and call results in Excel by hand. The center engaged its inspectors in a couple of trainings on communication skills. Moreover, the center has partly improved workplace conditions as a result of requests to GDT to install noise absorbing walls and floor in the office. Ministry of Finance and GDT supports the center as they find the center important for tax collection cost reduction, tax collection improvement and delinquency proceedings improvement. During the first phase of the project, the center greatly benefited from the work of consultants from Japan.

In 2016, the center received a tax debt/due worth of 10.7 billion tugrug of 23201 taxpayers and settled tax debt worth of 6.4 billion tugrug with 16566 taxpayers. Moreover, it made 17773 successful calls out of 31203 calls and received 9717 payment pledges worth of 4.6 billion tugrug in total. As of December 2016, 8006 or 82% of these paxpayers made payments worth of 3.5 billion tugrug. The center could not reach 9401 taxpayers or 40.5% of all scheduled calls due to inaccurate contact information in the taxpayers data management system. According to GDT statistics, in 2016 the center received 23201 cases and successfully settled 16566 cases.

Although, the center successfully operated during the year, there are several urgent issues for further improvement. 1) There is an urgent need to make debt call procedure consistent with the General Tax Law. In particular, the current procedure of keeping a tax debt for 60 days at the center is in contradiction of regulation for taking series of measures\proceedings if a taxpayer didnot pay tax within the period stated in tax notification. 2) There is a need for headphones. 3) There is a need for unified taxpayers data management system with constantly updated information. Currently, due to invalid contact information, out of 17000 calls only 10000 become successful and 70% of successful calls directly contact taxpayers. 4) The center needs trainings for their employees. In particular, there is an urgent need for training on communication skills with taxpayers.

3.3 How development of tax collection regulations is reflected in the draft amendments in tax laws?

³⁷ Previous rule approved by the order A191 of the Chairman of Custom and General Department of Taxation on May 26, 2016.

There is a need to develop tax collection regulations in Mongolia. The Ministry of Finance and GDT prioritized this issue, worked on required changes and developed a draft amendments in tax laws. Tax collection department proposed amendments to improve tax collection implementation authority and tax collection actions. The department pays specific attention to the use of advanced technology for reducing tax collection costs. ³⁸ Please, see the law amendments proposed by the department from Appendix A.1.1.

3.4 Current state of operations of tax divisions, urgent issues

This section is based on information from interviews with tax offices of Chingeltei district and Songinokhairkhan district and data provided by GDT. Table 4 summarizes information of the tax offices.

Tax Office of Chingeltei District (TOCD) employs 113 state tax inspectors and all are employed on a full time basis. The tax collection unit has 39 inspectors. In Chingeltei district, there are 15871 tax paying entities. In comparison to other districts, taxpayers' information system of TOCD has better quality. In 2016, Chingeltei district's tax revenue target was 138.4 billion tugrug. The office surpassed the target and collected revenue of 154.4 billion tugrug. TOCD makes effort to reach every taxpayers and reduction of delinquent taxes is prioritized.

Tax Office of Songinokhairkhan District (TOSD) employs 95 state tax inspectors on a full time basis and additional 45 employees on a part time basis. The tax collection unit has 33 inspectors. In Songinokhairkhan district, there are 15422 tax paying entities. The district has a very few big taxpayers, while there are a large number of small taxpayers.

	Tax Division of Chingeltei District	Tax Division of Songinokhairkhan District
Number of employees	In the office, there are 113 state tax inspectors, out of which 39 are in the tax collection unit.	In the office, there are 95 full time employees and 45 part time employees. The tax collection unit has 33 full time and 7 part time inspectors.
Workload of inspectors	Average workload for an inspector is 430-480 taxpaying entities. One inspector is responsible for 1593 entities, which are hard to process cases.	Average workload for an inspector is 600-700 taxpaying entities, out of which 200 are delinquent taxpayers. 2 inspectors are responsible each for 200 entities with challenging delinquent taxes and 1 inspector is responsible for 1500 entities.

Table 3.4. Description of Tax Divisions in Chingeltei and Songinokhairkhan districs

³⁸ Notes of meeting with the Head of Revenue department of the GDT

Taxpayers	In 19 khoroos of the district, there are 15871 taxpaying entities, more than 10 trading centers and 55500 tax paying citizens, who are either employed or self-employed.	There are 15422 taxpaying entities, out of which only 6-7 entities pay more than 1 billion tugrug in tax. There are more than 10000 non-operating etntities, which file X tax returns.	
Delinquent taxpayers and delinquent amount ³⁹	Past fiscal year: 2612; 36.3 billion ₹ Current fiscal year: 3223; 133.6 billion ₹	Past fiscal year: 6578; 21.8 billion ₹ Current fiscal year: 43799; 65.6 billion ₹	
Tax debt collection	Delinquency lequidation enforcement has been improved. In 2015, actual tax collection missed the revenue target. In 2016, tax collection has improved and the office surpassed the revenue target. The office takes the delinquent tax collection procedures in a timely manner for the entities with debt worth more than 10 million tugrug.	Collection of delinquent taxes has worsened. In 2015, number of court claim filing has increased for delinquent taxpayers. In 2015, delinquent tax from tax audit has decreased due to the Tax Forgiveness Law. Due to budget hardships tax delinquency of entities with government concession contract has increased.	
Tax plan performance	In 2016, tax revenue target was 138.4 billion turgug and actual tax revenue was 154.4 billion tugrug.	In 2016, tax revenue target was 66.0 billion tugrug and actual tax revenue was 60.0 billion tugrug. In 2015, target was 66.0 billion tugrug and actual revenue was 65.0 billion tugrug.	
Training enrollment	All the inspectors, enrolled in series of training on international taxes, changed their job and left the tax office. There is an urgent need of trainings on international taxation for its current employees.	Inspectors have not been enrolled in series of training on international tax. Some of inspectors were enrolled annual training organized by GDT. There is an urgent need of trainings on international taxation for its current employees.	

Source: Notes of interviews with TDCD and TDSD.

In 2016, TOSD had a tax revenue target of 66.0 billion tugrug and the actual revenue collected was 60.0 billion tugrug. The office has a large number of small taxpayers, who are not used to paying taxes. Hence, TOSD spends great deal of time and operational costs on delinquency processing. Curricula

Tax offices note that the calls made by the Tax Debt Call Center helped them. However, each office continued their calls in parallel with the center as they delinquent taxes are their responsibility. As a result, it is difficult to tell which part of tax debts were paid due to the tax offices' efforts and which part were due to the center's calls. This needs to be distinguished.

Tax offices have heavy workload due to a large number of calls for delinquent tax collection. But there is a lack of call making equipments and budgets. In particular, there is an urgent need for headphones and phones.

³⁹ Tax Revenue Department Data

Another issue is a lack of updated information in the taxpayers data management system. Tax offices spend considerable amount of time and operational costs on making taxpayers' information enquiries to the State Registration Department.

Tax offices ask for guidelines of the TMID of GDT and follow them for cases related to international taxation. There is an urgent need of guideline documents and handout materials. Moreover, they have a demand for trainings on international taxes for their inspectors. TOSD emphasized that the inspectors of Tax Monitoring and Inspection Units are in need of training on international taxes.

APPENDIX

Appendix A. Information and data collected during the research

A.1. Provision of middle and advanced level knowledge and practical skills on international taxation

A.1.1. Curriculum of training for state tax inspector

Juration: 30 workdays, 240 hours						
Date	Time	Name	Hours	Багшийн нэр		
	08.00-08.10	Introduction		Deputy Director of GDT, PAMD, Training center (TC)		
X/01 Wednesday	08.10-09.30	Ethics	2	PAMD T.Zayakhishig TC M.Choijilsuren		
	09.40-11.10	Communication	2	PAMD T.Zayakhishig TC T B.Ochirkhuyag		
	11.10-12.30	Lunch				
	12.30-14.00 14.10-15.40	Theory of tax	4	TC Kh.Khurmetkhan		
X/02	08.00-09.30 09.40-11.10	Theory of tax	2	TC Kh.Khurmetkhan		
Thursday		Service to tax payers	2	D.Bayaraa TC. D.Bayartsetseg		
	11.10-12.30	Lunch				
	14.10-15.40	Responsibility of accounts, purpose, principle	2	TC B.Batdorj		
X/03 Friday	08.00-09.30	Genera law of tax	2	TC B.Ochirkhuyag		
	09.40-11.10	General law of tax	2	TC B.Ochirkhuyag		
	11.10-12.30	Lunch				
	12.30-14.00	General Law of Tax	2	TC B.Ochirkhuyag		
	14.10-15.40	Rules, regulations and methodologies consistent with GLT	2	B.Batbold TC B.Ochirkhuyag		
X/06 Monday	/06 Ionday 08.00-09.30 Account, double bookkeeping system		2	TC B.Batdorj		
	09.40-11.10	Account, double bookkeeping system	2	TC B.Batdorj		
	11.10-12.30	12.30 Lunch				
	12.30-14.00	Rules, regulations and methodologies consistent with GLT	2	Z.Ganbold TC B.Batdorj		
			2			

N07 Tuesday 88,00-09.30 99,40-11.10 Financial report 2 TC B.Baidorj TC B.Baidorj 11.10-12.30 Lunch 2 TC B.Baidorj 12.30-14.00 Law of corporate tax 2 TC Kh.Khurmetkhan 14.10-15.40 Law of corporate tax 2 TC Kh.Khurmetkhan 11.10-12.30 Lanch 2 D.Gansukh TC H.Xeprareuw 11.10-12.30 Rules, regulations and methodologies consistent with GLT 2 E.Bud TC D.Bayartsetseg 11.10-12.30 Corporate tax law 4 TC Kh.Khurmetkhan X10 98,00-09.30 (99,40-11.10 Bookkeeping liquid assets TC N.Jargalisetseg 11.10-12.30 Corporate tax law 4 TC Kh.Khurmetkhan X10 98,00-09.30 (9,40-11.10 Corporate tax law 4 TC Kh.Khurmetkhan X/13 98,00-09.30 (9,40-11.10 Cost and value 4 TC Kh		14.10-15.40	General law of tax		TC B.Ochirkhuyag
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X/14 08.00-09.30		14.10-15.40		2	S.Tugsjargal TC Kh.Khurmetkhan
	X/14	08.00-09.30			

Tuesday	09.40-11.10	Registration receivables	2	TC M.Choijilsuren
	11.10-12.30		2	ni choijnisaron
	12.30-14.00 14.10-15.40	Law of VAT	2	TC D.Bayartsetseg
X/15 Wednesday	08.00-09.30	Rules, regulations and methodologies consistent with Law of VAT		TC D.Bayartsetseg
	09.40-11.10	Rules, regulations and methodologies consistent with Law of VAT	2	TC D.Bayartsetseg
	11.10-12.30			
	12.30-14.00	Law of VAT	2	TC D.Bayartsetseg
	14.10-15.40	Law of VAT	2	TC D.Bayartsetseg
X/16 Thursday	08.00-11.10	Law on personal income tax	4	TC B.Ochirkhuyag
	11.10-12.30			
	12.30-14.00	Law of VAT	2	TC D.Bayartsetseg
	14.10-15.40	Law of VAT	2	TC D.Bayartsetseg
X/17	08.00-09.30	Apllication of bonds, audit of it	2	L.Byambadorj TC B.Ochirkhuyag
Friday	09.40-11.10	Law on personal income tax	2	TC B.Ochirkhuyag
	11.10-12.30			
	12.30-14.00 14.10-15.40	Law on personal income tax	4	TC B.Ochirkhuyag
	08.00-09.30	Bookkeeping materials	2	TC Jargaltsetseg
X/20 Monday	09.40-11.10	Bookkeeping materials	2	TC Jargaltsetseg
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	12.30-14.00	Bookkeeping materials	2	Jargaltsetseg
	14.10-15.40	Bookkeeping materials	2	TC Jargaltsetseg
X/21 Tuesday	08.00-11.10	Laws	4	TC M.Choijilsuren TC

				B.Batdorj
	11.10-12.30			
	12.30-15.40	Laws	4	TC M.Choijilsuren TC B.Batdorj
X/22 Wednesday	08.00-09.30	Bookkeeping real estate	2	TC D.Bayartsetseg
	09.40-11.10	Bookkeeping real estate	2	TC D.Bayartsetseg
	11.10-12.30			D.Dayarseiseg
	12.30-14.00 14.10-15.40	Bookkeeping real estate	4	TC D.Bayartsetseg
	11.10-12.30			
	12.30-14.00	to present assigment		Instructors
	14.10-15.40	Introduce city tax office and assigment	2	Instructors
XI/7 Friday	08.00-09.30	Law of payment on water pollution		TC B.Ochirkhuyag
	09.40-11.10	Law of payment on water pollution	2	TC B.Batdorj
	11.10-12.30			
	12.30-14.00	Standard on archive work	2	TC B.Batdorj
	14.10-15.40	Exam	2	Instructors
XI/10 Monday	08.00-09.30	International taxation		TC Kh.Khurmetkhan
	09.40-11.10	Complex policy, file tax return	2	TC D.Bayartsetseg Jargaltsetseg
	11.10-12.30			
	12.30-14.00	Complex policy, file tax return	4	ТС

	14.10-15.40			D.Bayartsetseg Jargaltsetseg
XI/11			_	TC
Tuesday	08.00-09.30	Complex policy, file tax return	2	D.Bayartsetseg
				N.Jargaltsetseg
	09.40-11.10	Complex policy, file tax return	2	TC
				B.Ochirkhuyag
	11.10-12.30			
	12 20 14 00		2	TC
	12.30-14.00	Complex policy, file tax return	2	B.Ochirkhuyag
				Kh.Khurmetkhan
	14.10-15.40 Prepare to exam		2	D.Bayartsetseg
				B.Ochirkhuyag

TRAINING CENTER

A.1.2. International Taxation (2015.8.17-2015.8.21)

Date	Hour	Туре	Content	Lecturer	
	09:00-10:30	Lecture	Mongolian tax system b	GDT, Instructor of	
2015.8.17	10:40-12:00	Seminar	(Source rule)		
(Monday)	13:00-14:30	Lecture	Mongolian tax system 2	training center Jargaltsetseg	
	14:40-16:00	Seminar	(Permanent establishment)		
	09:00-10:30	Lecture	Mongolian tax system 3		
2015 0 10	10:40-12:00	Seminar	(Transfer pricing taxation)	GDT, Instructor of training center Jargaltsetseg	
2015.8.18 (Tuesday)	13:00-14:30	Lecture	Mongolian tax system 4		
	14:40-16:00	Seminar	To prevent tax avoidance, other methods except transfer pricing		
	09:00-10:30		Introduction to international		
2015.8.19	10:40-12:00	Lecture	taxation b	Consultant	
(Wednesday)	13:00-14:30		Lecture	Lecture	Introduction to international
-	14:40-16:00		taxation 2		
	09:00-10:30		Introduction to Transfer	Consultant Kodera Toshinari	
2015.8.20	10:40-12:00		pricing taxation b		
(Thursday)	13:00-14:30	Lecture	Introduction to Transfer		
-	14:40-16:00		pricing taxation 2		
	09:00-10:30	Lecture	Mongolian tax system الم		
2015.8.21	10:40-12:00	Seminar	(To prevent double taxation)	GDT, Instructor of training center Jargaltsetseg	
(Friday)	13:00-14:30	Lecture	Mongolian tax system δ		
	14:40-16:00	Seminar	(Contract of international taxation)		

Basic Training in International Taxation (2016.3.7-2016.3.11)

Date	Hour	Туре	Content	Lecturer	
	09:00-10:30	Ŧ.,	Introduction to Transfer pricing	Consultant	
2016.3.7	10:40-12:00	Lecture	taxation	Kodera Toshinari	
(Monday)	13:00-14:30		Introduction to international	Consultant	
	14:40-16:00	Lecture	taxation - Experience of Japan -	Ishiguro Hideaki	
	09:00-10:30	Lecture	Mongolian tax system b (Permanent resident, temporary		
2016.3.9	10:40-12:00	Seminar	resident)	GDT, Instructor of training center	
(Wednesday)	13:00-14:30	Lecture	Mongolian tax system 2	B.Ochirkhuyag	
	14:40-16:00	Seminar	(Permanent establishment)		
	09:00-10:30	Lecture	Mongolian tax system 3	GDT, Instructor of training center	
2016.3.10	10:40-12:00	Seminar	(Source rule)	B.Ochirkhuyag	
(Thursday)	13:00-14:30	Lecture	Mongolian tax system 4	GDT, Instructor of training center	
	14:40-16:00	Seminar	To prevent tax avoidance	Jargaltsetseg	
	09:00-10:30	Lecture	Mongolian tax system 5		
2016.3.11	10:40-12:00	Seminar	(methods to prevent double taxation)	GDT, Instructor of training center	
(Friday)	13:00-14:30	Lecture	Mongolian tax system 6 (Contract of international	Jargaltsetseg	
	14:40-16:00	Seminar	taxation)		

A.1.4.

Approved. Head of the Training center

B.Badamtsetseg

Schedule of the trainings in international taxation in 2017

N	Level of training	Туре	Торіс	Participants	Period	Lecturer
1	Advanced	Classroom	-International taxation -Transfer pricing taxation	GDT, City tax office, Districts' tax offices, state tax inspectors	40 hours in first quarter	Instructor Sh.Undraa
2	Basic, intermediate	Online	 -Introduction to international taxation -Types of permanent establishment and method of taxation -Methods to prevent international tax avoidance -OECD model tax convention -Cooperation among tax offices 	State tax inspectors, collectors	40 hours in second quarter	Instructor Sh.Undraa
3	Basic, intermediate	Discussion at workplace	-Review online courses -Discussions on real cases of Mongolia	State tax inspectors in districts, collectors	24 hours in third quarter	Instructor Sh.Undraa
4	Basic, intermediate	Distance learning	-Introduction to international taxation -Types of permanent establishment and method of taxation -Methods to prevent international tax avoidance	State tax inspectors in rural area	8 hours in fourth quarter	Instructor Sh.Undraa

Training Center

The survey on current jobs of 42 inspectors participating in the Project trainings / As for 2017.02.20 / 2017.03.07 **N1** N2 Names Tax Office Affiliated Duties Unit GDT 1 1 State tax inspector 1 Contract of double taxation, GDT TACD information exchange 2 2 State tax inspector 2 GDT TACD AAHOAT, XXOAT 3 International 3 State tax inspector 3 GDT TACD taxation, research 4 State tax inspector 4 GDT PAMD Internal work 4 5 State tax inspector 5 GDT ДАГ State tax inspector 5 6 State tax inspector 6 GDT ТТХГ VAT 6 7 7 ТОГ State tax inspector7 GDT Database, revenue registration 8 8 State tax inspector8 GDT CT Head 9 9 CT International State tax inspector9 GDT taxation, tax collection 10 10 State tax inspector10 GDT TYT State tax inspector in service hall 11 11 GDT TYT Call State tax inspector11 12 TYT НӨАТУС 12 State tax inspector12 GDT Affiliated units 13 1 State tax inspector13 SBRAD ХШХ State tax inspector -mining SBRAD ЭБОУТХ 14 2 State tax inspector14 International taxation SBRAD ЭБОУТХ Coal 15 3 State tax inspector15 4 XT 16 SBRAD State tax inspector State tax inspector16 17 5 State tax inspector17 City tax TTXX Registration office 18 6 City tax State tax inspector18 Dunjingarav One point service office 19 7 State tax inspector19 BZD ЭСТ External 20 8 State tax inspector20 BZD TOT Companies 21 9 State tax inspector21 ХШТ Abolished companies BGD 22 10 State tax inspector22 BGD ХШТ Audit 11 State tax inspector23 TOT Companies 23 BZD 24 12 HUD ХШТ State tax inspector24 Senior State tax inspector 25 13 State tax inspector25 SBD ЭСТ External 26 14 State tax inspector26 SBD ХШТ Audit 27 15 State tax inspector27 CHD TOT Companies 16 Umnugobi TTXT 28 State tax inspector28 Senior State tax inspector Orkhon T3T 29 17 State tax inspector29 Senior State tax inspector aimag 30 18 State tax inspector30 Tuv aimag TTXT State tax inspector - One point service

A.1.5

31	19	State tax inspector31	Tuv aimag	ХШТ	Audit			
32	20	State tax inspector32	Darkhan- uulaaimag	ТОТ	Companies			
Not	employ	red						
33	1	State tax inspector33	Maternity lea	aves				
34	2	State tax inspector34	Maternity lea	aves				
35	3	State tax inspector35	Maternity lea	aves				
36	4	State tax inspector36	Studying					
37	5	State tax inspector37	Died					
38	6	State tax inspector38	Out Tax offic	ces				
39	7	State tax inspector39	Out Tax offic	ces				
40	8	State tax inspector40	Out Tax offic	ces				
41	9	State tax inspector41	Out Tax offic	Out Tax offices				
42	10	State tax inspector42	Out Tax offic	Out Tax offices				
	Prepared: Sh. Undraa							

A.1.6. Document from Tax Administration Management Department

1. Human resource development plan

A. Is there any policy and document on human resource development plan related to international taxation? If yes, what is it? When was it approved?

- "Human resource policy of national tax departments" approved under a Decree 983 of a Chair of the GDT in December 13, 2013

-"Training and development programs of staffs of Mongolian tax offices" approved under a Decree A/11 in January 11, 2017

.....

Б. Current situation

I. Is human resource specialized in international taxation sufficient? Why?

-No

Comment: the human resources specialized in international taxation are insufficient. For instance, the number of qualified inspectors in this field is less than 10 percent of total inspectors.

Moreover, the department claims that evidences of losing qualified staffs in international taxation (for example, the core staffs changed their jobs to private sectors or other tax offices) make the problem of human resources more difficult.

II. In what level were the core staffs prepared? (basic, intermediate, advanced?)

- the staffs attended basic and intermediate trainings

III. Is the human resource development plan implemented? What percent is implemented?

- The trainings in international taxation have been carried out, but the number of staffs participating is not enough.

C. Is there any human resource development plan in future?

-Within the program approved in 2017, we will work by preparing implementation plans.

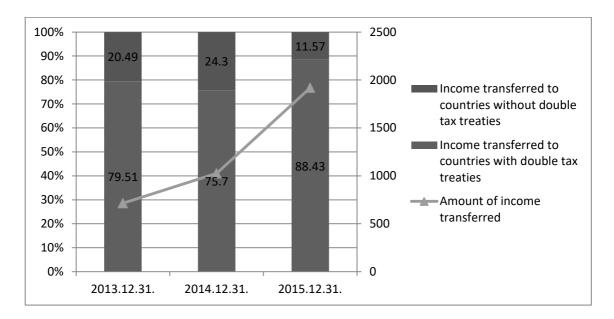
A.2.1. Statistics on international taxation on money transferred by companies registered at SBRAD.

Table A.2.1. Revenue from international taxation on money transferred by companies at the SBRAD

Indicators	2013.12.31	2014.12.31	2015.12.31
Number of tax payers	73	85	76
Number of countries where income receiving nonresident	96	130	120
alien registered as taxpayer			
Amount of money transferred /billion tugrugs/	714.33	1025.65	1918.1
Amount of tax levied according to corporate tax law	143.68	205.90	383.6
/billion tugrugs/	22.70	46.01	144.0
Amount of tax levied according to double tax treaties /billion tugrugs/	22.79	46.21	144.8
Total amount of tax levied /billion tug/	60.76	125.23	293.8

Source: International division at SBRAD, GDT

Figure A.2.1. Amount and percentage of income transferred by companies registered at SBRAD by countries with and without double tax treaties

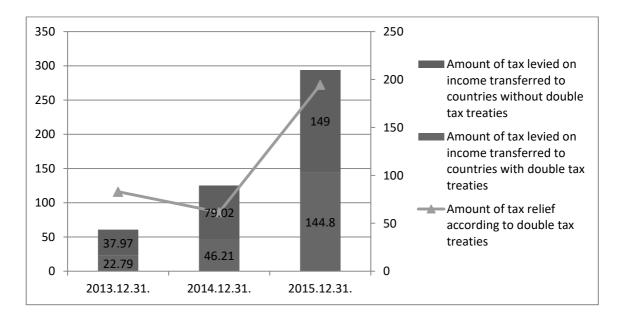


Year	Countries where income receiving nonresident alien registered as taxpayer	Amount of income transferred	Amount of tax levied according to the corporate tax law	Amount of tax relief according to double tax treaties	Amount of tax levied according to double tax treaties	Total amount of tax levied
2013	Netherlands	93.15	18.63	18.33	0.3	2.44
	Canada	90.39	18.79	15.7	3.08	8.33
	China	84.12	16.82	13.85	2.97	3.88
	Total amount	267.66	54.24	47.89	6.35	14.65
2014	Luxembourg	314.97	62.99	33.38	29.62	33.37
	Japan	123.26	24.59	24.58	0	24.59
	Singapore	116.99	23.4	16.31	7.08	7.42
	Total amount	555.22	110.98	74.27	36.71	65.38
2015	Netherlands	1,045.98	209.20	107.86	101.34	107.85
	Luxembourg	304.50	60.90	31.50	29.40	31.45
	Singapore	144.80	28.96	21.78	7.18	7.18
	Total amount	1,495.28	299.06	161.14	137.92	149.48

A.2.2. Countries where the highest amount of income transferred to /billion tugrug/

Source: International division at SBRAD

Amount of tax levied and tax relief on income transferred by companies registered at SBRAD /by countries with and without double tax treaties, billion tugrug/



3.1 A.3 How development of tax collection regulations is reflected in the draft amendments in tax laws?

A.3.1. Draft amendments on development of tax collection regulation:

In order to develop tax collection regulations, the Tax Revenue Department proposed the following changes in the draft amendments of the General Tax Law:

- 1.1 In order to identify tax delinquency, to deliver notification to taxpayers, who missed legally set deadlines, to satisfy equal treatment for every taxpayers, the tax debt payment invoice will be delivered within 90 days after the day of tax delinquency (notification through electronic tax system will be counted as notified).
- 1.2 To apply a tax relief for taxpayers, who cannot pay their tax within the tax bill dealine, by extending deadline up to 12 months for rescheduled monthly payments. Tax payment schedule agreement on condition of holding assets as collateral to prevent risks to tax offices. Within this time period, undue losses will be considered, but there will be no penalties and no enforcement actions.
- 1.3 Special authority for tax collection actions should be given. In other words, the authority to independently levy delinquent taxes from delinquent taxpayers' assets without filing court claims.
- 1.4 Need to provide previledges to taxation; In General Tax Law, Citizen's Law and Bankruptcy Law tax arrears are considered at the same priority level as the other arrears. Hence, there is a need to introduce principle change in General Tax Law and other laws such as "tax arrears will be prioritized over other arrears". Following the Citizen's Law, regulations on collateralized arrears, coordination between tax arrears and protection of third party rights during the delinquency processes.
- 1.5 There is a need to establish secondary obligation structure. During the enforced tax collection, delinquent taxpayers try to hide, to transfer their assets or sell their assets at unreasonably low price to their close relatives. During the enforced tax collection actions, if value of assets cannot cover the tax debt, then the related third person or the person who obtained asset at discount price should be obligated to pay tax debt.
- 1.6 To establish a structure to stop limitation period; In order to satisfy operational efficiency for resources (time, human resource and monetary costs spent) spent on tax collection process and to simplify these actions, delinquent taxes less than these collection costs should be invalidated. Moreover, regulations to suspend delinquent taxes for a certain period of time, when the taxpayer was established as insolvent.

A.3.2 GDT Tax debt call center's Report, 2016

In reporting year, the Tax debt call center received a tax debt/due worth of 10.7 billion tugrug of 23201 taxpayers in 6 largest districts of the capital city and 2 aimags. Tax debt worth of 6.4 billion tugrug, 71.4% of total debt worth, of 16566 taxpayers has been settled. Tax debt of 13745 taxpayers has been estinguished and thus the number of small delinquent taxpayers has been reduced by 59.2%. Moreover, it made 17773 successful calls out of 31203 calls and 9717 taxpayers (42% of delinquent taxpayers) gave a promise to pay tax debt/due worth of

4.6 billion tugrug in total. As of December 31, 2016, 8006 or 82% of these paxpayers paid tax debt worth of 3.5 billion tugrug (74% of promised total). 2101 taxpayers with tax debt worth of 1.5 billion tugrug did not promise to pay the debt.

The center could not reach 9401 taxpayers or 40.5% of all scheduled calls due to wrong contact information and information about tax debts worth of 5.1 billion tugrug has not been distributed. After each call, the center prepared call outcome information and submitted it to the relevant tax divisions. Moreover, the center did a study on taxpayers with invalid contact information and submitted it to the relevant tax divisions for correction.

Technical cooperation deliverables

Human resource development plan for international taxation support

Mongolian Project (International Taxation Support) Human Resource Development Plan

July 2017, Project Expert Hideaki Ishiguro

I Perspectives and priority points for human resource development in this project

1. Basic policy

In the field of international taxation, the GDT's human resources development sets the administrative execution capability level of the staff in charge of international taxation as follows, and has been implemented targeting the core staff (40 persons) selected by the GDT, with the goal of reaching the level each of the development process from beginner to intermediate to advanced.

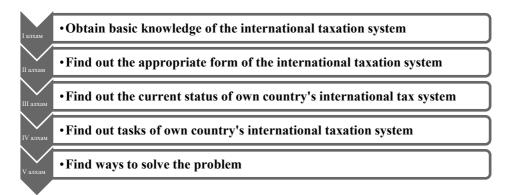
In Phase 1, intermediate level of the core staff has been achieved, thus, human resource development will be promoted with the goal of reaching the advanced level in this project (Phase 2).

'el	Computational knowledge-based capacity	Implementation based capacity (investigation capacity)
Level	Ability to accurately interpret the taxation rules of own country and to propose amendments thereto.	Ability to accurately determine the grounds of taxation in real cases according to the international taxation of own country
Beginner	To study and evaluate own country's international taxation system in relation to the main framework of international taxation and the specific provisions of agreements, laws and regulations.	Understand the system involved in basic international transactions, such as finance, budget, and services, and make decision on taxation of specific transactions.
Intermediate	To study the features of the international taxation system in own country in comparison with the provisions of the OECD agreement and the international taxation system of other countries	To be able to correctly identify difficult international trade transactions and international transactions between parent and subsidiary, as well as to properly determine taxation on the particular transactions.
Advanced	Propose an accurate and timely understanding of the international taxation aspects of own country in the dynamic environment of international taxation and propose to introduce changes in the taxation system in accordance with the real situation.	To accurately describe the avoidance within international transactions, and to correctly determine the taxation of a particular transaction.

Table 1 Levels of administrative execution ability	v of staff in charge of international taxation
Table I Devels of auministrative execution ability	y of stall in charge of international taxation

2. Strengthen knowledge

Reinforcement of knowledge is ultimately aimed at fostering and strengthening the problem-solving ability of the country's tax system, and this is achieved by implementing the following steps.



Of these, "the ideal form" basically refers to Japan's international taxation system (Figure 1) and international norms set forth in the OECD Model Convention. Therefore, it is necessary to make the recommendations in accordance with the priority order of developing countries (Table 2), based on the final report of the OECD / G20 BEPS (Base Erosion and Profit Shifting) project, which consists of 15 action plans published in September 2015, also from the perspective of international cooperation.

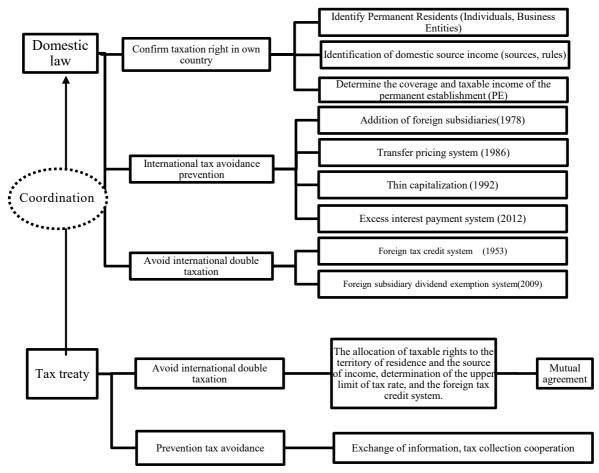


Figure 1 Framework of Japan's international tax system

Table 2-BEPS Action Plan and Achievements (in priority order of developing countries)

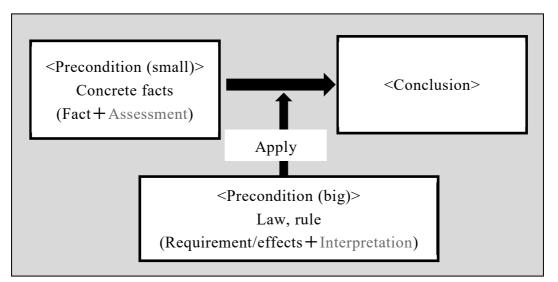
Level	Acti	vities	Result	Level	Acti	vities	Result
High	4	To limit base erosion through the use of	Domestic rules, Transfer	Medium	8	to ensure that transfer pricing	Transfer pricing
		interest expense to	pricing			outcomes are	guideline,
		achieve excessive	guideline			better aligned with	model tax
		interest deductions				value creation:	convention
High	6	Prevent treaty shopping	Domestic	Medium	9	Intangible property to ensure that	Transfer
		through new treaty provisions	rules , model tax convention		-	transfer pricing outcomes are better aligned with value creation: Other high-risk transactions	pricing guideline, model tax convention
High	7	Preventing artificial avoidance of permanent establishment status in tax treaties	Model tax convention	Medium	12	to require taxpayers and advisors to disclose aggressive tax planning arrangements	Domestic rules
High	10	to ensure that transfer pricing outcomes are better aligned with value creation: Other high-risk transactions	Transfer pricing guideline, model tax convention	Medium	14	Implement mutual agreement with efficiency.	model tax convention
High	11	to collect and analyse data on the economic and fiscal effects of tax avoidance behaviours and on the impact of measures proposed under the BEPS Project.	Suggestions for data and analytics that should be collected	Low	2	Neutralising the effects of Hybrid mismatch) arrangement	Domestic rules, model tax convention
High	13	Countering transfer pricing documentation	Domestic rules, Transfer pricing guideline	Low	3	Strengthening the system of profit accounting of subsidiaries abroad	Domestic rules
Medium	1	Taxation on digital transactions	Report of possible joint actions	Low	15	Multrilateral instrument	Report on applicable international common law and tax matters
Medium	5	Countering harmful tax practices with a focus on improving	Get acquainted with the policies of a	Developm	ent W	, Part I of A Re Yorking Group on the In Countries, Paris.	port to G20 mpact of BEPS
		transparency Хор хөнөөлтэй	member country				

3 Strengthen investigation capabilities

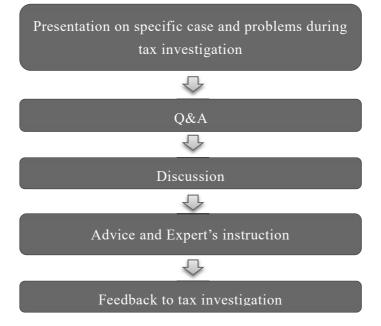
In order to execute proper taxation, it is necessary to make each tax inspector's legal three-tiered thinking process (Figure 2) function correctly and effectively.

In this project, following the first phase, the case study is positioned as a basic tool for improving the investigation capability, and the participants will discuss the advanced and complex international taxation case that occurred in Mongolia. 1) Whether the facts are correctly grasped and evaluated, 2) whether the laws and notices to be applied are correctly selected, 3) whether interpreted rationally, or 4) whether the conclusions drawn are reasonable by strengthening the ability to investigate through fostering legal thinking

skills in international taxation.



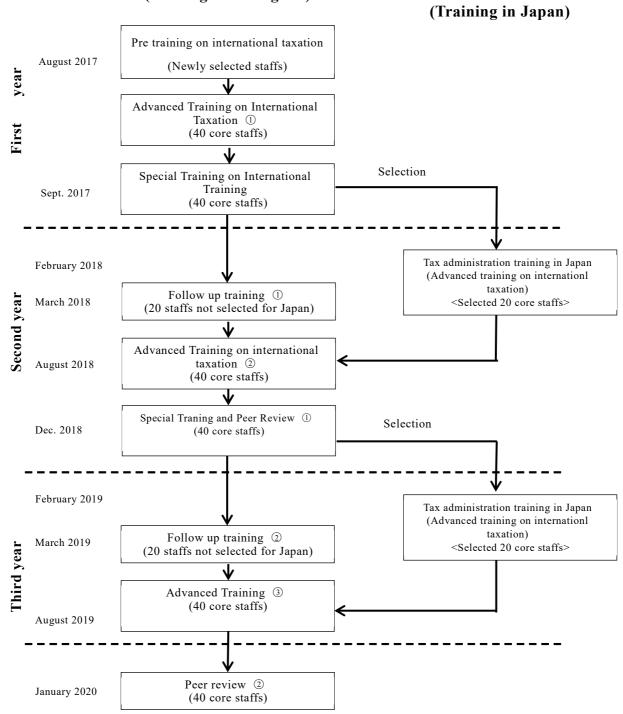
The case study basically proceeds according to the following flow. For each training, 4-5 teams will be organized for presentation and discussion.



II Human resource development schedule for this project

The core staff human resource development schedule at this stage (3 years) is as follows. Basically, the training schedule of Phase 1 is followed, but in this project, for the newly selected core staff, in order to eliminate the level difference with the original core staff, "international taxation pre-training at intermediate level" was planned additionally.

Training curriculum for core staffs in charge of international taxation



(Tranings in Mongolia)

- Pre Training: Content-based training implemented in Phase 1 of the project to eliminate differences in levels between the newly-selected inspectors and core inspectors who participated in the previous Phase.
- Advanced Training: An important course that enhances the skills of the core staffs.
- Special Training: Training to view and evaluate the results of the the work of the core staffs, and to influence the selection of training courses in Japan.
- Tax Administration Training in Japan: Advanced training for selected inspectors
- Follow up training: Courses for the remaining non-selected inspectors for Japan Training using Japan training contents.
- Peer review: хэлэлцүүлэг: Summarize the actual results of the follow up training and advanced training conducted in Japan.

Technical cooperation deliverables

International taxation training materials and curriculum

Curriculum of the International Taxation pre-training

2017/8/21-8/25

	2017/8/21	8/22	8/23	8/24	8/25
	Mon	Tue	Wed	Thu	Fri
(9:00-12:00)	Basis of International Taxation system	Tax Treaty	Transfer Pricing (Theory)	International Tax avoidance (Case study)	Advance pricing agreement, Mutual agreement procedure, Exchange of information
	Ishiguro	Kodera	Kodera	Ishiguro	Kodera
(13:00-16:00)	Permanent establishment (Case study)	Tax Treaty	Transfer Pricing (Theory)	International Tax avoidance (Case study)	Summary discussion Q&A
	Ishiguro	Kodera	Kodera	Ishiguro	Kodera and Ishiguro

Name of Inspectors

No	Name	Affiliation
1	Kh.Suvd-Erdene	Tax inspector, Public Administration and Management Department, GDT
2	J.Tserentsoo	Tax inspector, Taxpayer Relations Department, GDT
3	A.Suvdaa	Tax inspector, Taxpayer Relations Department, GDT
4	G.Enkhjin	Tax inspector, Tax Revenue Department, GDT
5	Ts.Bayarmaa	Tax inspector, Internal Audit Department, GDT
6	B.Ariungerel	Tax inspector, Risk Management Division, GDT
7	N.Tuul	Tax inspector, Training Center, GDT
8	B.Zolzaya	Tax inspector, Training Center, GDT
9	S.Gunjinlkham	Tax inspector, Taxpayer Relations Department, GDT
10	L.Battsetseg	Head of Taxpayer Relation Division, LTO
11	G.Byambasuren	Tax inspector, Mining and International Taxation Division, LTO

12	P.Otgonsuren	Tax inspector, Tax Audit and Methodology Division, LTO
13	N.Bolorchimeg	Tax inspector, Tax Audit and Methodology Division, LTO
14	N.Munkhdavaa	Tax inspector, Tax Audit and Methodology Division, LTO
15	N.Khandkhuu	Tax inspector, Tax Audit and Methodology Division, LTO
16	Ts.Ishjamts	Tax inspector, Tax Audit and Methodology Division, LTO
17	B.Tugsjargal	Tax inspector, Tax Audit and Methodology Division, LTO
18	Sh.Enkhjargal	Tax inspector, Tax Audit and Methodology Division, LTO
19	Yo.Munkhbat	Tax inspector, Taxpayer Relation Division, LTO
20	B.Khaliun	Tax inspector, Taxpayer Relation Division, LTO
21	Sh.Batzaya	Tax inspector, Taxpayer Relation Division, LTO
22	B.Urantsetseg	Tax inspector, Risk and Statistics Division, LTO
23	Ts.Tuvshinbayar	Tax inspector, Tax Revenue Division, LTO
24	G.Banzragch	Tax inspector, Tax Revenue Division, LTO
25	Kh.Altankhuu	Tax inspector, Administration Division, LTO
26	O.Tsend-Ayush	Tax inspector, Tax Audit and Methodology Division, Capital City Tax Office
27	B.Bat-Erdene	Tax inspector, Chingeltei District Tax Office
28	Ch.Lkhamragchaa	Tax inspector, Chingeltei District Tax Office
29	D.Solongo	Tax inspector, Sukhbaatar District Tax Office
30	Ts.Undarmaa	Tax inspector, Songinokhairkhan District Tax Office
31	S.Naranbaatar	Tax inspector, Dornod Province Tax Office
32	Ts.Unurmunkh	Tax inspector, Orkhon Province Tax Office
33	S.Duubayar	Tax inspector, Umnugovi Province Tax Office
34	L.Munkhtuul	Tax inspector, Tax inspector, Legal affairs division, GDT

Basis of International Taxation

August 21st, 2017 Pre-seminar of International Taxation Hideaki ISHIGURO

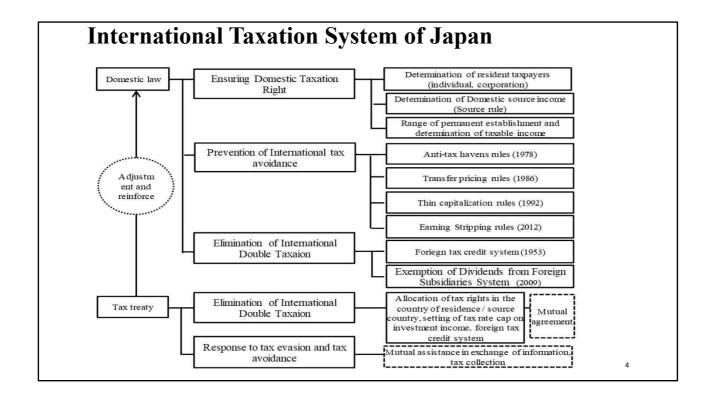
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- TOPIC 1 Outline of International Taxation System
- TOPIC 2 Ensuring domestic taxation rights under domestic law
- TOPIC 3 Prevention of International Tax Avoidance by domestic laws
- TOPIC 4 Elimination of Double Taxation by domestic laws
- TOPIC 5 Tax Treaties of Japan

TOPIC 1 OUTLINE OF INTERNATIONAL TAXATION SYSTEM



TOPIC 2 Ensuring domestic taxation rights under domestic law

5

6

Residence Jurisdiction and Source Jurisdiction

Residence Jurisdiction

- \checkmark Based on human connections (nexus) with income earners.
- \checkmark Taxation on world-wide income

Source Jurisdiction

- \checkmark Based on physical relevance to income-calculating activities.
- \checkmark Taxation on domestic source income

(Cat	egories of	Taxpayers and Scope of T	Saxation of Japa		
		Classif	ication of taxpayers	Range of taxable income		
al		Resident taxpayer	Individuals who have an address in Japan or who have been resident for more than one year	World wide income (domestic source income + foreign source income)		
Individua	Individual	Individua	Individua	Non-permanent resident	Individuals who do not have Japanese nationality and have had an address or residency in Japan for up to 5 years within the past 10 years	Domestic source income + Foreign source income (Limited to domestic payment and domestic remittance)
		Non-resident taxpayer	Non-resident individuals	Only domestic source income		
Corporation		Domestic corporation	A corporation with a head office or main office in Japan	World wide income		
Corpc		Foreign corporation	Corporations other than domestic corporations	Only domestic source income 7		

Source Rules and Taxation Methods

Domestic investment category	Activity classification	Taxation method	Tax payment method	Taxation standard
Direct investment (direct)	Active business activities (positive)	Comprehensive taxation (comprehensive)	Tax return (self-assessment)	Net amount (net)
Portfolio investment (portfolio)	Passive business activities (passive)	Withholding taxation (withholding)	Withholding tax (withholding)	Gross amount (gross)

- 1. Among the domestic investments that cause domestic source income, those with "control" are direct investments and those without are portfolio investments.
- 2. "Permanent establishments (PEs)" such as branches owned by non-residents and foreign corporations in Japan have a strong "nexus" with the country, and active business activities through the PEs receive comprehensive taxation as a direct investment.

Permanent Establishment

Definition

the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

(OECD Model Tax Convention, Article 5, para.1)

• Exception

If the purpose is only for activities of a preparatory or auxiliary character, such as use of facilities for storage, display and delivery of goods, it is not a PE. (ditto, para.4)

• Principle of "No PE, no taxation"

Profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein.

(OECD Model Tax Convention, Article 7, para.1, 1st sentence)

Permanent Establishment

Concrete example (from OECD Model Tax Convention, Article 5)

• <u>Branch</u> PE

A place of management, a branch, an office, a factory, a work-shop, and a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

• <u>Construction</u> PE

A building site or construction or installation project constitutes a permanent establishment only if it lasts more than twelve months.

• <u>Agent</u> PE

Where a person (excluding independent agents) is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State.

Permanent Establishment under Tax Laws of Japan

• Branch PE

Branches, branch offices, offices, factories, warehouses and places where natural resources are collected, such as mines and quarries. (However, the place to be used for the purchase or storage of assets, or for activities that have an auxiliary function for the execution of the business, such as advertising, promotion, provision of information, market research, basic research, etc. are not included)

• Construction PE

A place for the work of construction, installation, assembly or the provision of the supervision services for more than one year.

• Agent PE

A person who has the authority to conclude a contract for the business in Japan for himself or herself, who regularly performs this business (an addictive agent), or who stores assets such as commodities and delivers them to customers (stock holding agent) or a person who does important parts such as obtaining an order (order obtaining agent). (However, this excludes independent agents where agents independently perform duties related to the business and conduct them in the usual way.)

11

Profits Attributable to PE

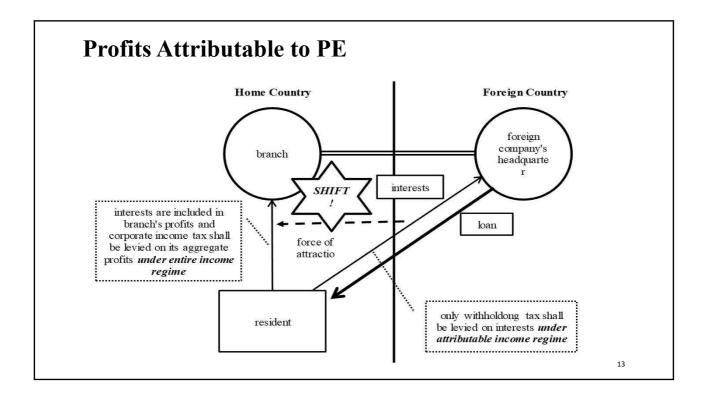
• Entire income principle

In case of having domestic PE, for domestic source income, accept a method of summing all of that income into PE, the same as residents and domestic corporations.

Attributable income principle

In case of having domestic PE, for domestic source income, accept a method of summing only the profit attributable to the PE the same way as for residents.

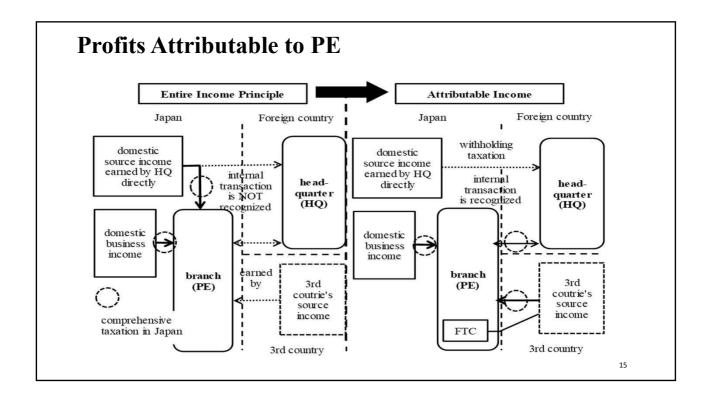
If the enterprise carries on business as aforesaid, the profits that are attributable to the permanent establishment in accordance with the provisions of paragraph 2 may be taxed in that other State.(OECD Model Tax Convention, Article 7, para.1, 2nd sentence)



Profits Attributable to PE

• AOA (Authorized OECD Approach)

For the purposes of this Article and Article [23 A] [23B], the profits that are attributable in each Contracting State to the permanent establishment referred to in paragraph 1 are the profits it might be expected to make, in particular in its dealings with other parts of the enterprise, <u>if it was a separate and independent enterprise engaged in the</u> <u>same or similar activities under the same or similar conditions</u>, taking into account the functions performed, assets used and risks assumed by the enterprise through the permanent establishment and through the other parts of the enterprise.(OECD Model Tax Convention, Article 7, para.2)



Taxation of Japan on Foreign Corporations (until March, 2016)

Classification of foreign corporations		Corporati	ons with PE in Japan			
Гуре	es of income	Branch PE Construction PE or Agent PE		1	Tax withholding	
1	Business income					
2	Income from management or holding of domestic assets				none	
3	Income from management or holding of domestic assets (only immovable property)		The shaded area indica the corporate tax rang		(principle)	
4	Consideration for providing human services		(Comprehensive taxati		20.420%	
5	Rent of domestic immovable properties				20.420%	
6	Other domestic immovable properties			folio investment	none	
\bigcirc	Interest			n foreign corporate	15.315%	
8	Dividend			lquarters is also	20.420%	
9	Loan interest			sidered as direct	20.420%	
10	Royalties		attributed to	stment and taxed	20.420%	
	Income from business advertising		domestic	Withholding tax	20.420%	
12	Pension for life insurance contract				20.420%	
(13)	Replenishment money for regular deposit		busines		15.315%	
14	Distribution of profits based on anonymous partnership agreements	· · · · · · · · · · · · · · · · · · ·			20.420%	

Taxation of Japan on Foreign Corporations (from April, 2016)

	Classification of foreign corporations	C	orpora	ations v	vith PE in Japan	Corporations without	
Гуро	es of income	Income a	ttributal	ole to PE	Income not belonging to PE	1	Tax withholding
	Business income			_			
2	Income from management or holding of domestic assets		m				none
3	Income from transfer of domestic assets (only immovable property)		to PE				(principle)
4	Consideration for providing human services]	attributed				20%
5	Rent of domestic immovable properties	1	libi				20%
6	Other domestic source income		attı				none
\bigcirc	Interest		þ				15%
8	Dividend		5				20%
9	Loan interest		Income				20%
10	Royalties		2				20%
11	Income from business advertising				Withhol	ding tax	20%
12	Pension for life insurance contract		$ \Theta $				20%
13	Replenishment money for regular deposit						15%
14)	Distribution of profits based on partnership agreements						20%

TOPIC 3 *Prevention of international tax avoidance by domestic laws*

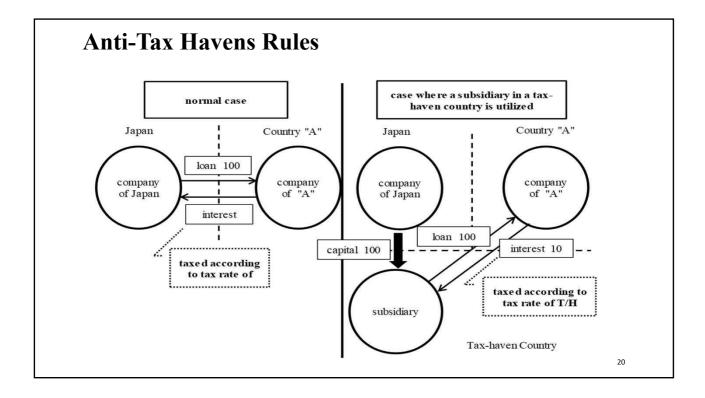
Anti-Tax Havens Rules

• Issue

Domestic corporations do international transaction through foreign subsidiaries with extremely low tax burdens, may unduly reduce or avoid tax burdens compared to direct international transactions, and may be able to avoid taxation in Japan.

• Measures

- ✓ The amount equivalent to the income of foreign subsidiaries with a certain tax burden level (20%) or less is regarded as the income of domestic corporations and taxed together (combined taxation on a company basis).
- ✓ For asset management income, even if it meets the exemption criteria, it is added up and taxed (combined taxation of asset-based income).



Anti-Tax Havens Rules

• Exemption (Judgment of economic rationality) Standard

- 1. Business standard (The main business is not a certain business such as holding shares)
- 2. Substantive criteria (Has office required for main business in the country where the head office is located)
- **3.** Management control criteria (Manages, controls and operates the business in the country where the head office is located)
- 4. One of the following criteria
- (1) Country of residence (Main business mainly in the country where the head office is located)

♦ Applicable when the main business is other than the following

- (2) Unrelated party criteria (Transaction rate with unrelated party is more than 50%)
- ✤ Applicable when the main business is wholesale, banking, trust, financial product transaction, insurance, water transportation, and air transportation.

21

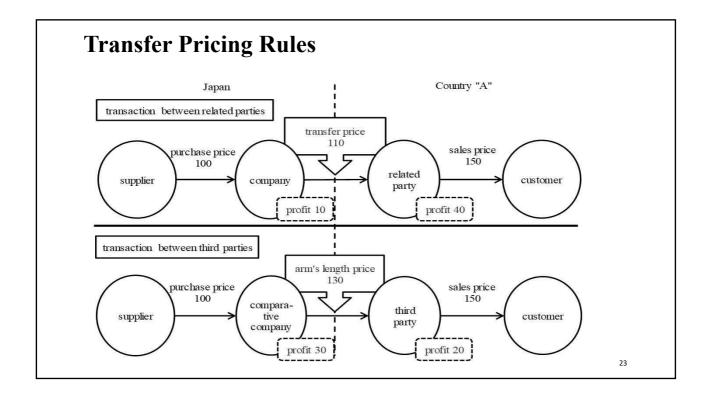
Transfer Pricing Rules

• Issue

If a company sets a transaction price (transfer price) with an overseas affiliated company to a price different from the normal price, it is possible to transfer the profit from the one country to other.

• Measures

The income is calculated and taxed as if that the transactions with overseas related companies were conducted at the normal transaction price (arm's length price).



Transfer Pricing Rules

<Calculation method of arm's length price in Japan>

Three basic methods	CUP : Comparative Uncontrolled Price Method	Method based on the price at the time of buying and selling inventories of the same k as foreign-related transactions between unrelated parties under similar circumstances	
	RP : Resale Price Method	Based on the amount calculated by the buyer of inventories related to foreign-relat transactions, which was sold to non-related parties at the price (resale price) minus ordinary profit rate (gross profit rate)	
	CP : Cost Plus Method	A method based on the amount calculated by adding the ordinary profit rate (gross pr margin) to the price (acquisition cost) at which the seller of the inventory related to forei related transactions purchased it from an unrelated party	
Other methods	TNMM : Transactional Net Margin Method	A method based on the amount calculated by the same method as the RP method and the method based on the operating profit margin earned from transactions with unrelated partie	
	PS : Profit Split Method	A method of summing operating profits related to foreign-related transactions betw domestic corporations and foreign-related parties, dividing them according to the factors to contributed to the generation of the profits, and assigning them to the corporations at foreign-related parties 1. Comparative PS Method 2. Contribution PS Method 3. Residual Profit PS Method	that

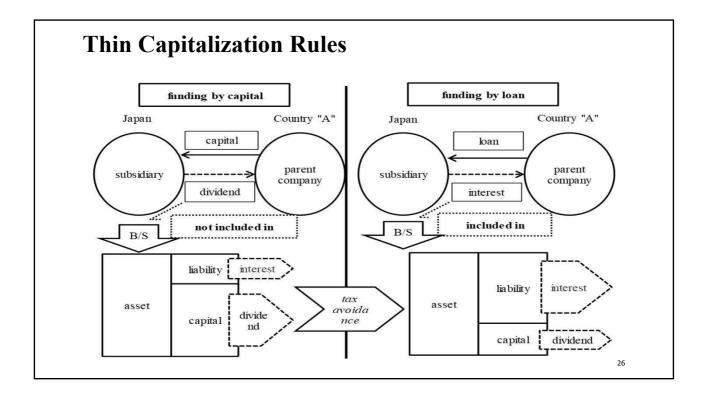
Thin Capitalization Rules

• Issue

When a company raises funds from an overseas affiliated company, if it reduces the investment (dividends to the affiliated company cannot be deducted) and increases the loan (interest paid to the affiliated company can be deducted), it is possible to reduce tax burden in Japan

• Measures

Deductions are not permitted for interest expenses where the ratio of investment and loan exceeds a certain ratio (in principle, three times the equity interest of the overseas parent company.)



Earning Stripping Rules

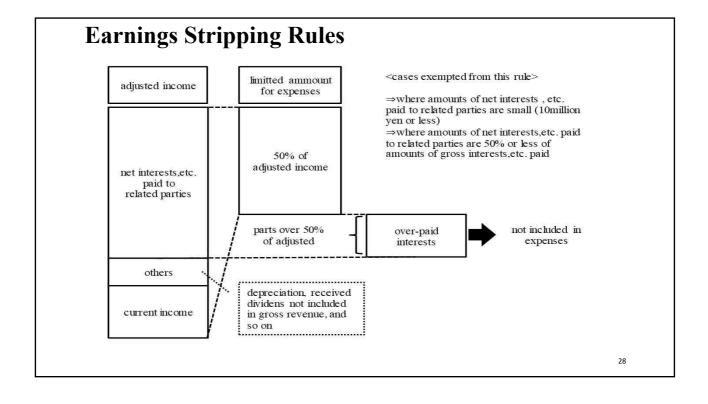
• Issue

Using the fact that interest expense is included in the deductible for the purpose of calculating a company's income, borrowing between related parties is arbitrarily set, and excessive interest expenses can be set without affecting the related party's total expense income and it allow tax avoidance to reduce tax burden.

• Measures

Not allow to deduct the amount exceeding the fixed percentage (50%) of the adjusted income amount of the net interest paid to related parties for the current term.

☞ In recent years, major developed countries are promoting tax exemptions on interest at the source countries under tax treaty and strengthening measures to limit the deduction of interest payments.



TOPIC 4

Elimination of double taxation by domestic laws

Foreign Tax Credit (FTC) System

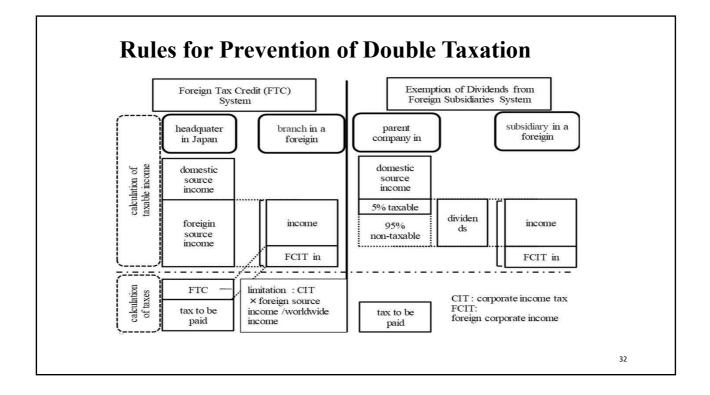
□ Significance

- In order to eliminate international double taxation, it is necessary to deduct the foreign tax paid by a foreign branch of a domestic corporation (so-called PE) in a foreign country within the range of the corporate tax to be paid in Japan for foreign income.
- Tax treaties with developing countries may allow tax deemed foreign tax credits (Tax Sparing Credit).

Exemption of Dividends from Foreign Subsidiaries System

□ Significance

- A system whereby foreign dividends received by a parent company from a foreign subsidiary are not included in profits and foreign tax on the subsidiary and international double taxation of dividends received by the parent company in Japan on dividends received from the subsidiary.
- Non-income is equivalent to 95% of the dividend received from a foreign subsidiary (5% is the amount corresponding to the cost of the dividend).



TOPIC 5 *Tax treaties of JAPAN*

Tax Treaties

- The tax treaty contributes to the promotion of sound investment and economic exchange between the two countries through the avoidance of double taxation, tax evasion and tax avoidance.
- The tax treaty has an "OECD model tax convention" which is an international standard, and is a template for concluding tax treaties, mainly among OECD member countries. Japan, a member state, has adopted regulations in line with this.

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OECD Model Tax Convention

□ Main contents of the OECD Model Tax Convention

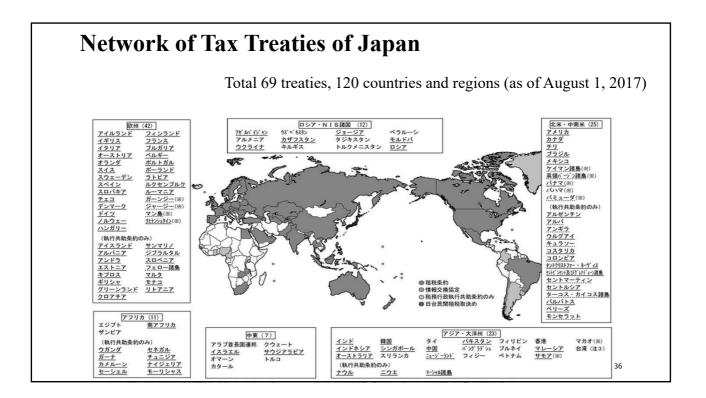
1. Avoidance of double taxation

- Defining the range of taxable income in the source country (country where income is generated)
- Business income is taxed only on income obtained through activities such as branches
- Investment income (dividend, interest, royalties) sets an upper limit on tax rate
- Method of eliminating double taxation in country of residence
- Foreign tax credit
- Eliminate taxation that does not comply with the treaty through mutual agreement (including arbitration) between tax authorities

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2. Response to the tax evasion and tax avoidance

- Exchange of taxpayer information (including bank secrets) between tax authorities
- Tax collection assistance



Classification	Main contents	The number of treaties	The number of partner countries
Tax treaty	Elimination of double taxation and prevention of tax evasion and tax avoidance	56	67
Exchange of Information (EOI)	Exchange of information on tax	11	11
Tax administration mutual assistance treaty	Mutual assistance in exchange of information, tax collection and document delivery	1	81* (application extension) 96
Japan-Taiwan tax arrangement	The tax treaty between the Public Interest Incorporated Association (Japan) and the Sub- Korean Association (Taiwan) has been effectively converted into a tax treaty by law.	1	1

References

- Web site of Ministry of Finance, Japan
- http://www.mof.go.jp/tax_policy/
- Web site of the OECD
- http://www.oecd.org/tax/treaties/
- Yoshihiro Masui, Yuko Miyazaki [International tax law(3rd edition)] (Publishing association of Tokyo University, 2015)

Case study on permanent establishment

August 21, 2017 International taxation on pre-training

Exercise 1 ① Branch PE

For each of the following cases, will Mongolian corporation F have a branch or other PE in Japan?

- 1. F operates a management consulting business for small and medium-sized enterprises, rents a room in a Tokyo with a two-year contract, dispatches one employee from Mongolia, and recruits four people locally in Tokyo.
- 2. F operates a resort tourism business and has a ski resort in Hokkaido.
- 3. F operates a flower sales business, has a warehouse in Hokkaido, and exports flowers by air to East Asia.
- 4. F is doing in a movie distribution business and is promoting a new movie in Japan.

Case Study 1 Reference

1. Branch PE

Branches, factories, and other places where business is conducted(Branches, branch offices, offices, factories, warehouses, mines, quarries and other places where natural resources are collected, plantations, farms, etc.)

Those not included in $PE \Rightarrow$ Places where auxiliary and preparatory activities are performed

- 1) Certain locations used only for the business of purchasing assets
- 2) Certain locations used only for storing assets
- 3) Certain places used solely for conducting business activities that have an auxiliary function in the execution of advertising, publicity, provision of information, market research, basic research and other business

Case Study 2 Internet Sales

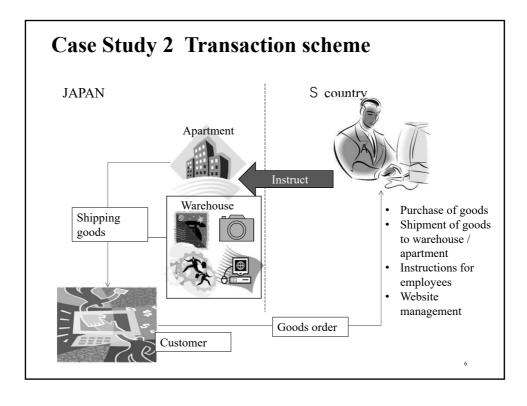
[Factual relationship]

- 1. Japanese A had a personal business of selling smartphones imported from foreign countries to Japanese customers using websites and auction sites established on the Internet.
- 2. A married an S country resident in January 2010 and left for S country.
- 3. After leaving Japan, A rented a warehouse in addition to the apartments he had rented before, and continued his business by allowing employees to keep goods. The projects that A was conducting in Country S are as follows:
 - 1. Creating and updating websites
 - 2. Accepting orders from customers via the website
 - 3. Selection of products to sell, purchase orders
 - 4. Shipping products in Japan and determining product prices
 - 5. Creating a Japanese version of the instruction manual
 - 6. Instructions for apartment and warehouse employees



Case Study 2 Internet Sales

- 5. The warehouse was equipped with communication devices such as telephones, personal computers and fax machines, and cameras for taking photographs when posting products on the Internet.
- 6. The work performed in the apartment and warehouse is as follows.
- 7. Operation check of imported products
- 8. Product packing, Japanese instruction manual attached
- 9. Shipment of goods to customer
- 10. Receiving returned defective products and returning them to the manufacturer
- 11. Shooting products for posting on the website
- 12. According to A's statement, the purpose of storing goods in apartments and warehouses was "because shipping costs are lower and delivery times are shorter than sending them directly to customers".



Case Study 2 Internet Sales

[Considerations] Based on the actual relationship, let's consider the taxation of A as follows.

• Is A a resident or non-resident?

What is the difference between taxation for residents and non-residents?

- If A is a non-resident, if is it possible to say that A had the following PE in Japan? Let's consider each one.
- Branches, etc.
- Construction workshop
- Agent
- Let's clarify points that may be difficult when investigating A:

Case Study 2-Points for Examination

- What are the criteria for a resident? Whether the "home of life" is in Japan. (House, business, length of stay, family, etc.)
- 2. Determination of PE Which specific facts did you use to determine (eg, warehouse functions, employee roles)?
- 3. Survey flow

Information gathering \Rightarrow Preparatory survey \Rightarrow On-site survey \Rightarrow Factual relationship grasp (evidence documents, questions to taxpayers) \Rightarrow Calculation of income amount \Rightarrow Filing, tax payment

Case Study 2 Internet Sales

The case where the apartment and warehouse used for the business of internet sales corresponded to PE and were determined to have the income tax obligation and decided to dispose of the income tax.

[Abstract]

This warehouse has the function of saving import / delivery costs, shortening the period from customer ordering to delivery, and adding economical added value by attaching a Japanese version of the instruction manual. Rather, it is identified as important and indispensable for realizing the benefits of performing the business.

Case Study 3 Foreign subsidiary

[Background]

In 2100, with the economic unrest in Japan, foreign capital began to be withdrawn. Accordingly, the Japanese yen became unstable and its value soared. As a measure, the Japanese government has enacted a law that Japanese domestic investment companies (securities companies, etc.) can only sell products denominated in Japanese yen.

As a result, the wealthy Japanese have begun to transfer assets to foreign investment companies so that they can invest outside of the Japanese yen.

Case Study 3 Foreign subsidiary

Japan's prestigious securities company J feared the business loss associated with such asset transfer and thought as follows:

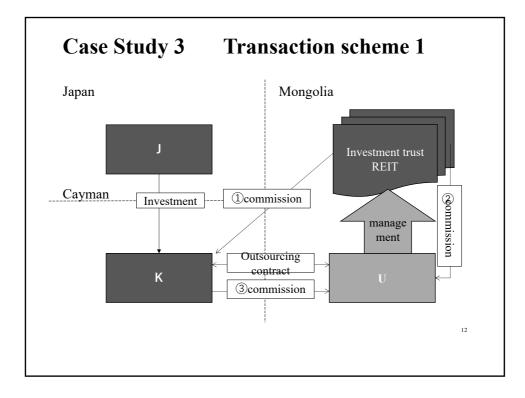
At present, Mongolia's economy is strong and there is demand from Japanese investors. Therefore, it is beneficial to sell TMG-type investment trusts such as investment trusts related to coal mine development companies and real estate investment trusts (REITs) to Japanese customers.

J subsidiary K is established in the Cayman Islands.

A contract will be signed between Mongolian Trust Ulaanbaatar (hereafter U), a Mongolian investment management company that handles the above products, and have U's clients manage and manage the funds of J's customers.

Ask Japanese customers to purchase Mongolian investment trusts through K.

This way, J was able to force Japanese customers to purchase products other than yen denominated.

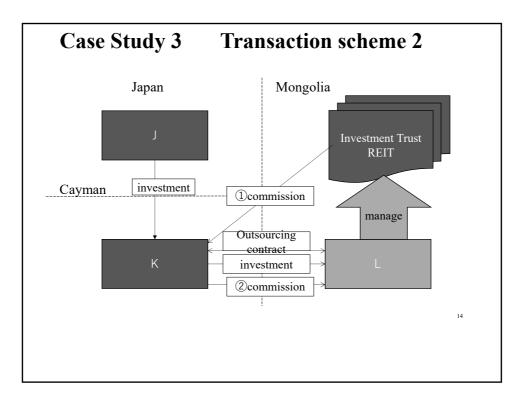


Case Study 3 Foreign subsidiary

However, U has charged K a property management fee, in addition to deducting 0.75% of the client's net assets directly from the customer's account. Then K thought as follows.

- 1. Established a wholly-owned by K corporation L in Mongolia.
- 2. L contracts with K and takes over the work that U has done so far.
- 3. L receives an asset management fee from K.
- 4. L's business under contract is as follows.
- Research and analysis on investment
- Advise K on investment
- Invest K customer assets

Under this system, most of L's work was related to contracts with K, and more than 90% of revenue was from K



Case Study 3 Foreign subsidiary

Over the next few years, the Mongolian economy has been performing steadily, investment trusts and other factors have increased, and K has earned 50 billion yen annually.

One day, K representative X was contacted by Mongolian tax authority Y.

Y This is tax office. Talking about K's corporate tax investigation.

X [? ? ? We are a Cayman corporation and there are no branches in Mongolia.]

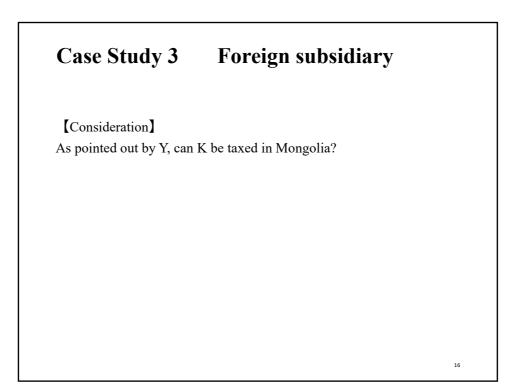
 $Y \ \lceil I \ think \ you \ have \ income \ from \ investment \ trust \ management \ fees.
floor$

X [Oh, the commission is not the income in Mongolia because it is the price paid for the investment consultation of the client's portfolio in Japan. Regarding investment management, we have a contract with subsidiary L and leave it to that. I also pay a commission.]

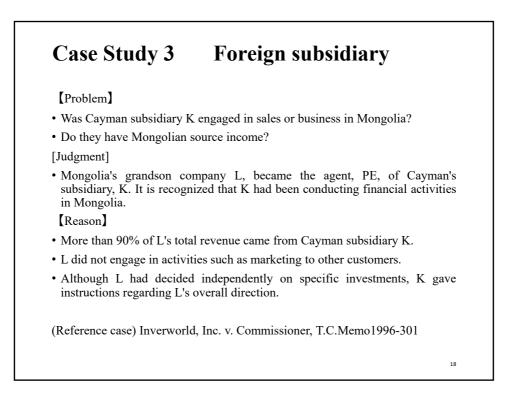
Y ∫We will investigate further as there is a possibility that there may be taxable income in Mongolia. J

15

X [??????]



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Mongolia Country Training (Intermediate international taxation)

TAX TREATY

February 2015

1

2

Overview of tax treaties -Main contents of OECD model tax treaties-

Avoidance of double taxation

>Limitation of taxable income range of source country

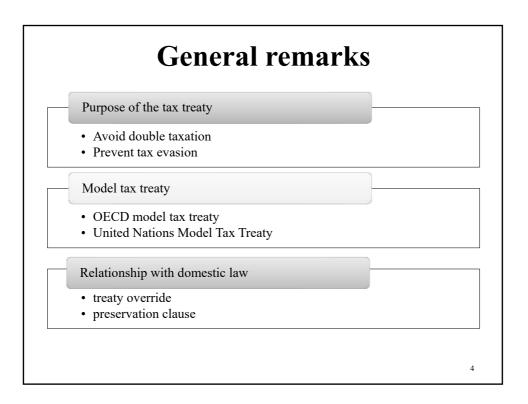
- As for business income, only income derived from activities such as branches, is taxed.
- Set the maximum tax rate on investment income (dividends, interest, royalties)
- Eliminate double taxation in country of residence
 - Foreign tax credits, etc.
 - Eliminate taxation that does not comply with the contract through mutual consultation (including arbitration) between the tax authorities

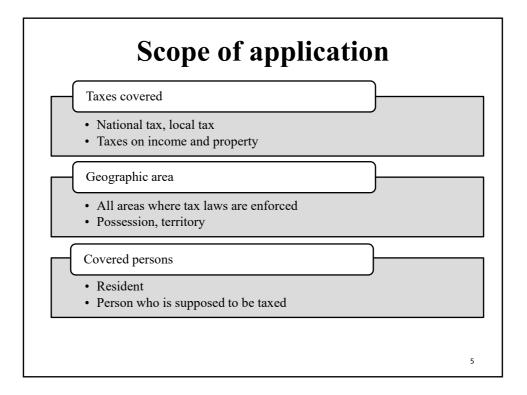
Fighting tax evasion and avoidance

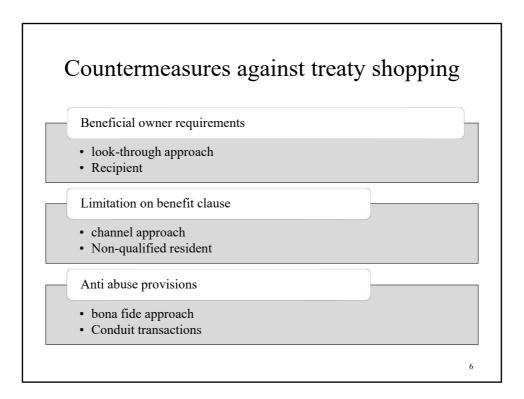
- Exchange of taxpayer information (including bank secrets) between tax authorities
- Tax collection assistance

Model tax treaty

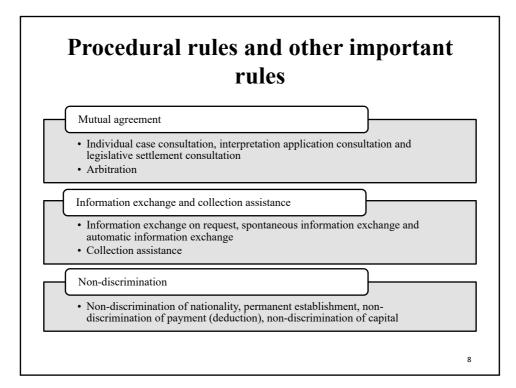
- OECD Model Tax Convention http://www.oecd.org/tax/treaties/
- United Nations Model Double Taxation Convention between Developed and Developing Countries http://www.un.org/esa/ffd/tax/unmodel.htm
- Convention on Mutual Administrative Assistance in Tax Matters http://www.oecd.org/ctp/exchange-of-tax-information/

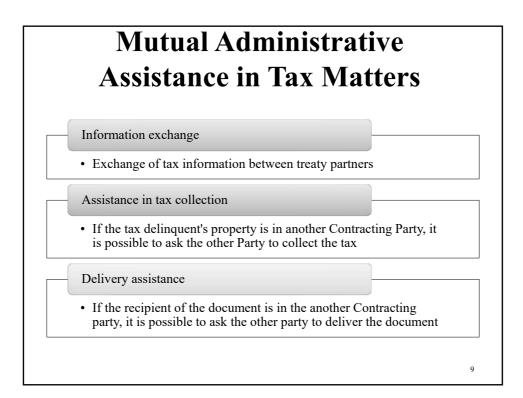


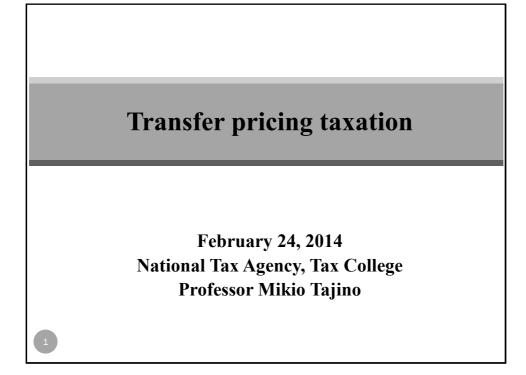


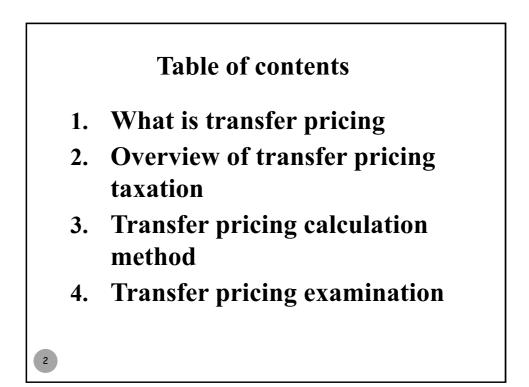


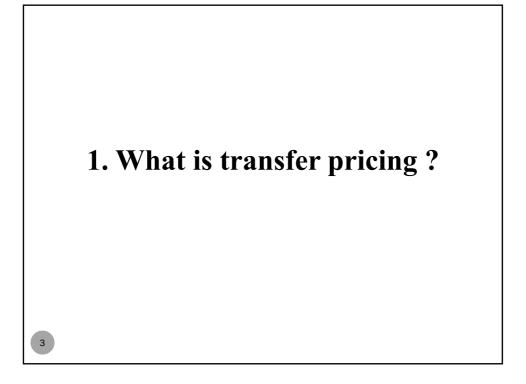
Allocation of taxation right -Summary of tax rights of source country-		
Type of income	Income attributable to permanent establishment	Income not attributable to permanent establishment
Immovable property income	Taxable	Taxable
Business income	Taxable	
Dividend	Taxable	* Limitation of tax rate 5% / 15%
Interest	Taxable	* Limitation of tax rate 10%
Royalty	Taxable	
Transferred income	Taxable	* Transfer of immovable property (immovable property shares)
Employment income	Taxable	* Short-term stay tax exemption
Remuneration	Taxable	Taxable
Entertainment income	Taxable	Taxable

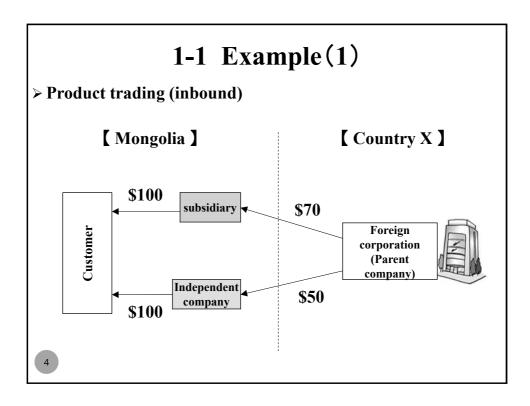


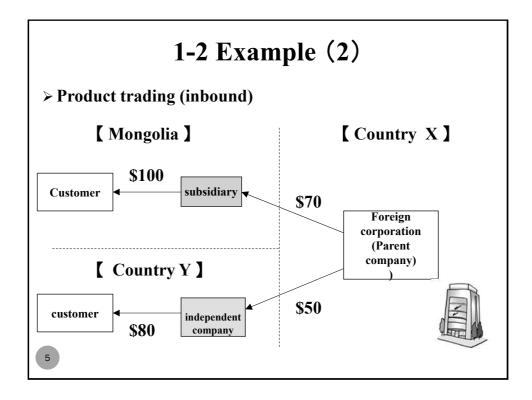


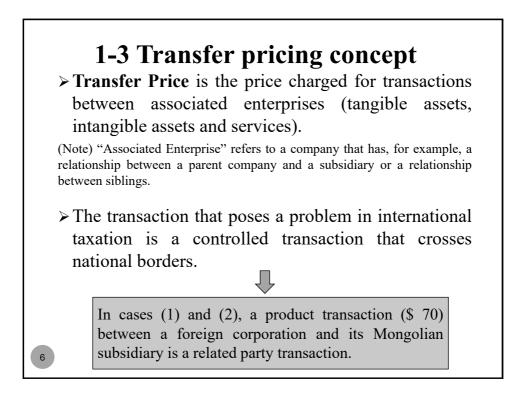












2. Overview of transfer pricing taxation

2-1 Introduction of transfer pricing tax system

7

8

> Internationalization of corporate activities
> The pursuit of profit by the entire corporate group
> Manipulation of intra-group transaction price
> Repatriation of income (reduction of taxable income)

Introduction of transfer pricing legislation

2-2 Purpose of transfer pricing taxation

> Transfer pricing taxation is a tax system established to ensure that income is properly distributed among related parties in accordance with the arm's length principle when a company transfers its income abroad through transactions with related parties.

(Note) The Arm's Length Principle is defined as a condition in which transactions between related parties are subject to conditions different from those established between independent companies, thereby reducing the profits of companies in their own country. The principle is that tax authorities can tax their own companies, including profits that would otherwise have been to the interests of their own companies (Article 9 of the OECD Model Tax Convention).

2-3 Characteristics of transfer pricing taxation

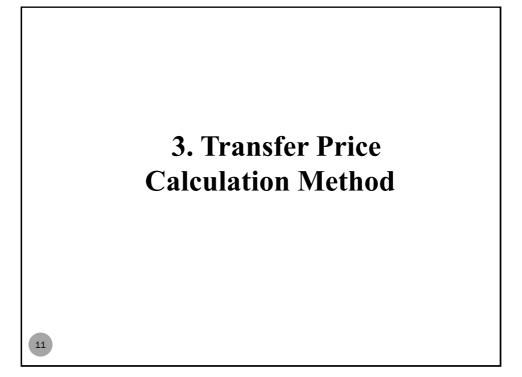
(1) It covers transactions between related parties.

(2) It only works if the taxable income of the country of origin is underestimated.

(3) The intention to avoid tax is not a tax requirement.



10



3-1 Arm's length price Arm's Length Price (ALP) refers to the price charged in comparable uncontrolled transactions (Comparable Uncontrolled Transactions) under comparable circumstances. [Question] In case (1), under what conditions can the transaction price (\$ 50) of a product between a foreign company and an independent company be ALP?

3-2 Transfer pricing calculation method

> The method for calculating ALP is called the transfer pricing method, and the OECD guidelines on transfer pricing stipulate the following five methods:

> Transactional Method

(1) Comparable Uncontrolled Price (CUP) Method

(2) Resale Price (RP) Method

(3) Cost Plus (CP) Method Ашгийн арга (Profit Method)

> Profit Method

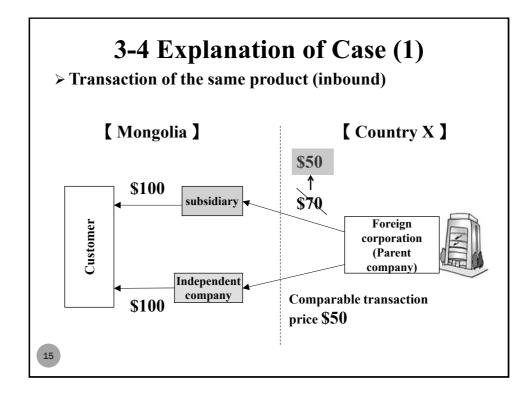
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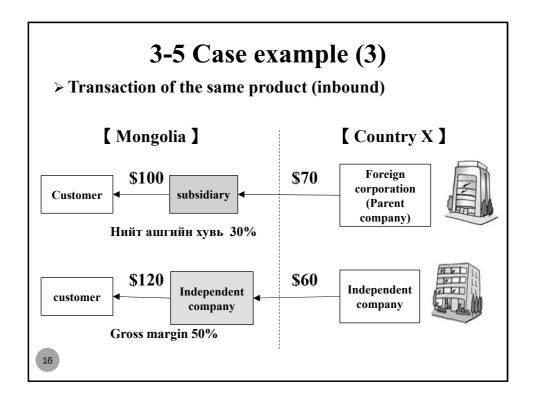
- (1) Transactional Net Margin Method (TNMM)
- (2) Profit Split (PS) Method

3-3 Comparable uncontrolled price method (CUP Method)

- > The CUP method is a method in which the transaction price of an asset or service between related parties is directly compared with the transaction price of an asset or service between comparable non-related parties under comparable circumstances.
- > ALP is the transaction price between comparable unrelated parties under comparable circumstances.
- > The assets or services to be compared must be same or similar.

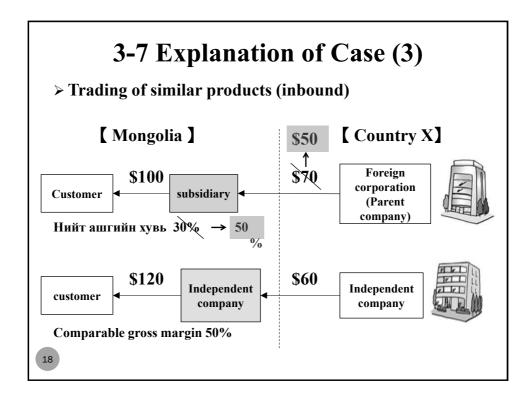


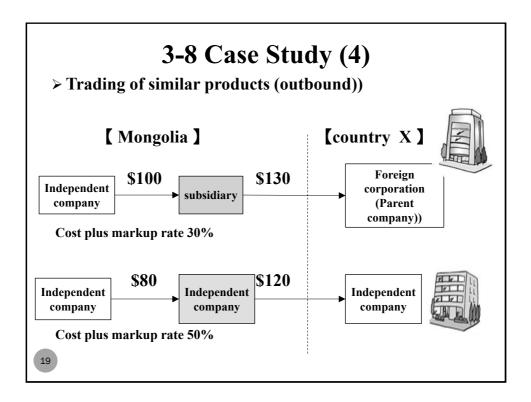




3-6 Resale price method (RP method)

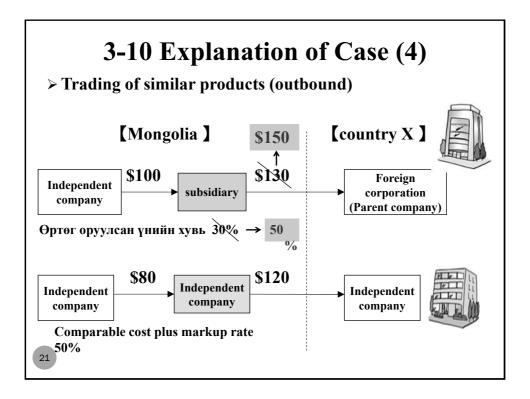
- > The RP method is a method that compares gross margin (resale margin ratio) when a company resells a product purchased from a related party to an unrelated party with a level of gross profit between comparable unrelated parties.
- > ALP is calculated by subtracting the appropriate gross margin from the resale price.
- > The function (Activity level) that a company performs is more important than the similarity of products.
- > Not applicable if the company (reseller) has intangible assets such as high-value trademarks.

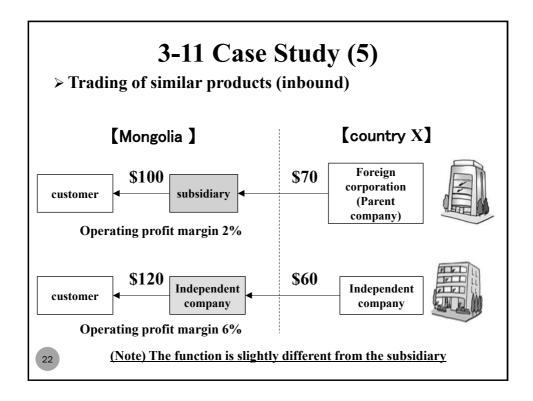




3-9 Cost-based method (CP method)

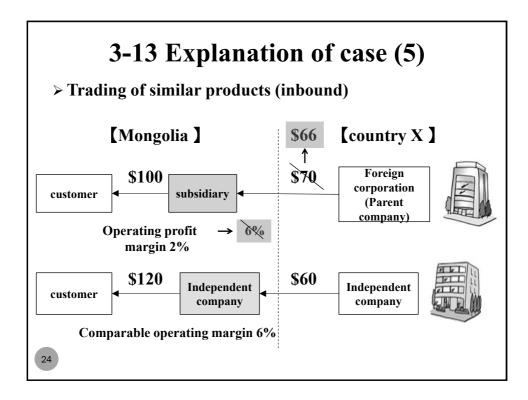
- > The CP method compares the cost plus markup rate when an entity sells (or provides services) to a related party with the cost plus markup rate between comparable unrelated parties.
- >ALP is calculated by adding appropriate markup to the cost.
- > The function (activity level) that a company performs is more important than the similarity of products (or services).
- > Not applicable if the company has intangible assets, such as high-value trademarks.

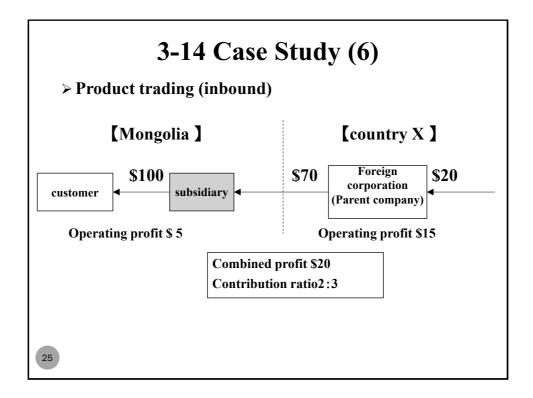




3-12 Transactional Net Margin method (TNMM)

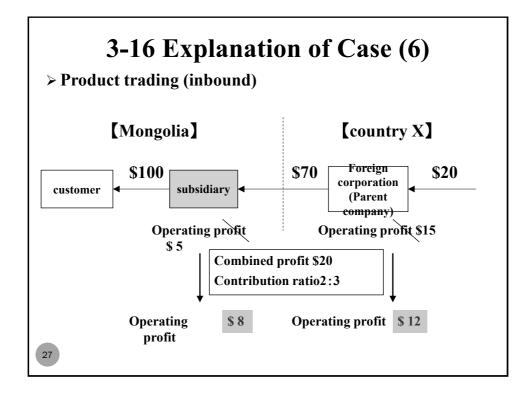
- > TNMM is a method of comparing the ratio of operating profit (Net Profit) to a company's optimal criteria (eg, sales, costs, assets) with the ratio between comparable unrelated parties.
- > ALP is calculated according to the RP method and the CP method.
- > In TNMM as well, the function (activity level) that a company performs is more important than the similarity of products (or services).
- > However, TNMM does not require rigorous functional similarity as the RP and CP methods.





3-15 Profit split method (PS method)

- > The PS method divides the combined profit generated from related party transactions on a reasonable basis.
- > ALP is calculated by multiplying the combined profit by a reasonable split ratio.
- > The combined profit is generally calculated by adding the operating profit of each related party.
- > The split ratio is calculated using a comparable split ratio between non-related persons and a contribution ratio of each related person.



3-17 Choosing the best method

- >In applying the transfer pricing method, the most appropriate method should be selected in each case. This is called the Best Method Rule.
- >The most appropriate method is the one that can calculate the most reliable ALP under the facts and circumstances of each case.
- >Under the optimal method rule, comparability and data reliability of unrelated transactions are important.



4. Transfer pricing examination

4-1 Transfer pricing examination procedure

Step 1: Collect information and data

- Target corporations and foreign related parties
- Types of industries and products that belong to the target corporations

Step 2: Studying the possibility of transferring income abroad

Step 3: Identify problematic transactions

- Step 4: Choosing the most appropriate transfer pricing method
- Step 5: Identify comparable uncontrolled transactions
- Step 6: Comparability Adjustment)

 \Rightarrow Only when necessary

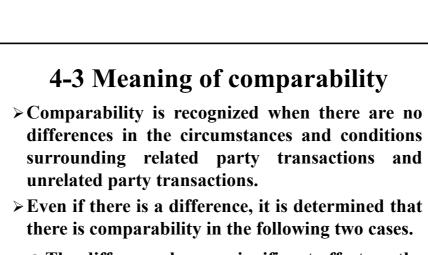
Step 7: ALP calculation



4-2 Comparability analysis

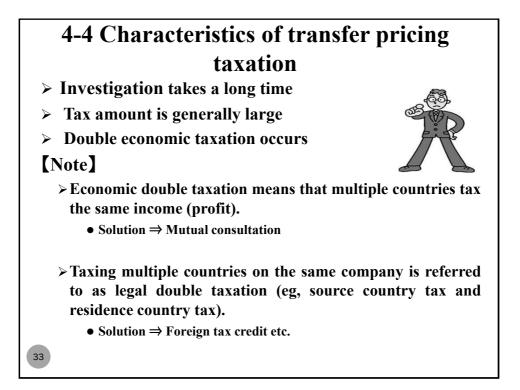
- > To identify comparable uncontrolled transactions, it is necessary to select a potential comparable transaction from the available database and then perform a Comparability Analysis.
- > The important factors in the comparability analysis are:
 - Features of transferred assets or services
 - Functions performed by the parties
 - Contract terms

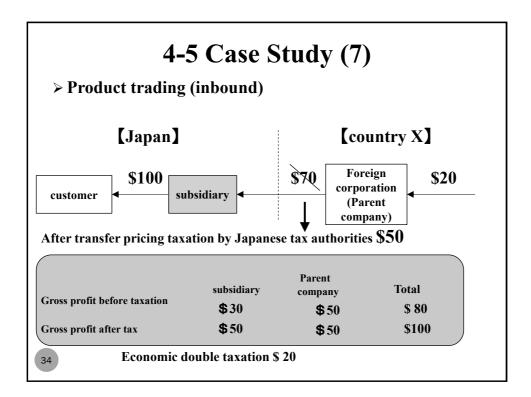
- Economic status of the parties
- Business strategies executed by the parties

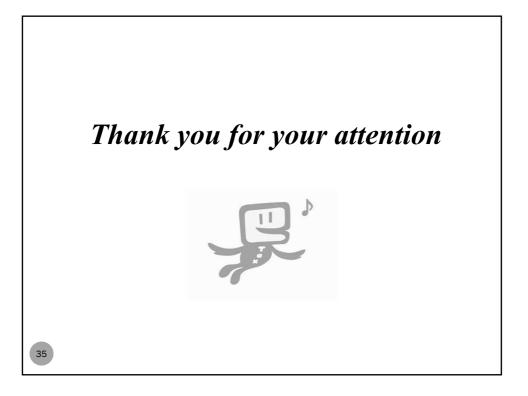


- The difference has no significant effect on the transaction price or profit
- •Substantially accurate reconciliation is possible to remove the effects of the difference









INTERNATIONAL TAX AVOIDANCE (Case studies)

Pre-seminar of International Taxation (2017.08.24) JICA Project Expert Hideaki ISHIGURO

1

2

Overview

- ≻What is tax evasion?
- > What is tax avoidance?
- > What is tax planning?
- ≻What is tax saving?

Definition

Tax Evasion

Generally associated with

- Illegal means
- Intentionally paying less tax than owed
- By concealing or misreporting relevant facts (incomplete or false statements)

3

4

- Usually a crime (consequences: fine or imprisonment)

Tax Avoidance

Generally associated with

- Reduction of the tax liability by legal means
- -Actions within the law....but against the spirit of the law
- Lack of economic substance and of business purpose
- Tax saving as main or sole motive

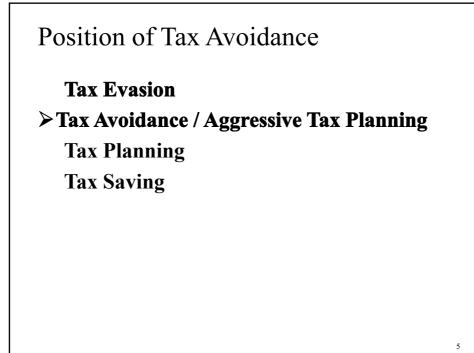
Definition

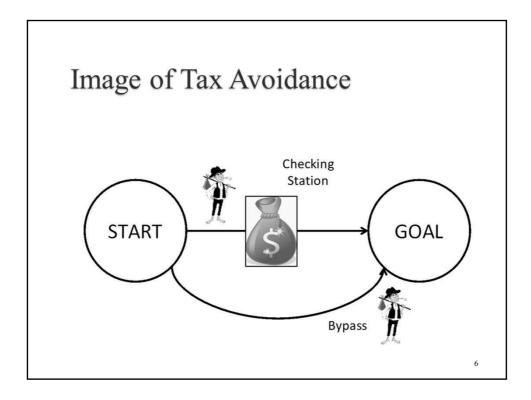
Tax Planning

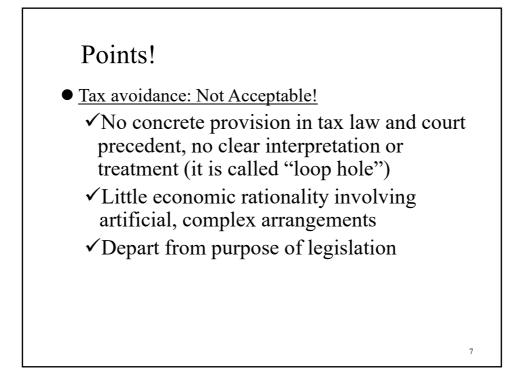
- Usually understood as "acceptable tax avoidance"
- Behaviors which reduce the tax due but in ways that are in line with both the letter and spirit of the law
- Business purpose / economic substance

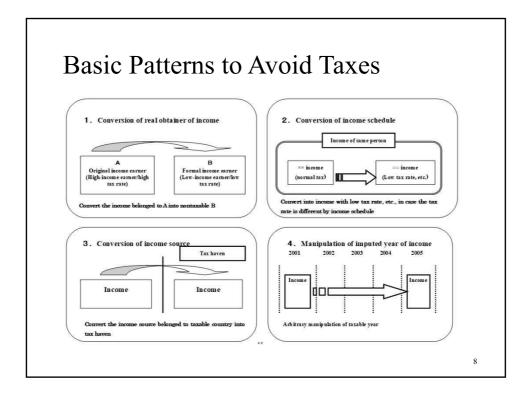
Tax Saving

The conduct that is clearly allowed to reduce taxable income by statute









Case studies

- 1. Draw a transaction diagram for each case below.
- 2. Identify tax issues in each case and determine the measures to be taken.

Case #1

- I. Company "P" in country "X" imports "M" brand home appliances from company "S" in country " α " and sells it to domestic customers.
- II. Apart from the transaction of company "P", "A", a representative of "P", imported "M" brand home appliances from company "GS" in country " α " and sold them to customers in country "X".
- III. Company "GS", wholly owned subsidiary company of "SS" which is located in country " β ", is 100% invested by company "P" although it is the corporation of country " α " and paper company.
- IV. The necessary tasks, including administrative work at company "GS" and price negotiations with customers in country "X", are performed by employees of company "P" in country "X".
- V. Company "P" included the information of imports from Company "S" and domestic sales in country "X" on a corporate tax return report, but it did not mention the report of imports from company "GS" and domestic sales in country "X".

Case #2

- I. Until December 31, 2011, "A" was an employee of Company "P" in Country "X". The salary was \$50 million per year.
- II. "A" retired from Company "P" on December 31, 2011, and has appointed by Staffing company " α " (an unrelated person) for Company "P" as a temporary staff member in the country.
- III. Since 2012, Company "P" has been charged by Company " α " for \$51M per year for providing A's services, paying the same amount as an outsourcing expense and writing it off.
- IV. Company " α " is outsourced to a temporary staffing company " β " which Is located in "Tax Haven" J Island for \$50M per year.
- V. Company " β " was a paper company established by the advisory accountant of Company "P".
- VI. A paid salary to "A" for 15M annually from Company " β " is transferred to Bank account "A" in country "X', and 35M is transferred to Bank account "A" in J Island.
- VII. In an income tax report, "A" mentioned about \$15M which is transferred to its own bank account in country "X".

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Case #3

- Bank "A" in Country "X" sold the following tax saving schemes to companies "α", "β", and "Θ" (hereinafter "3 companies") in Country "Y".
- I. In January 2013, company "B", the interdependent company of the bank "A", in a country "Z" formed a partnership (hereinafter referred to as "P/S") in the country and every 3 operations invested \$100K each and became partnerships.
- II. Purchased an aircraft from aircraft manufacturer "C" for \$300 million. The purchase was borrowed from Bank "A" by collateralizing the aircraft.
- III. P/S leased the purchased aircraft to Leasing Company "D" for 5 years. The lease was \$20M per year, the same amount as the interest paid by P/S to Bank "A".
- IV. In 2013, the P/S profit and loss was deducted by \$20M in lease income from Company "D", \$20M in interest paid to Bank "A", \$34M in aircraft depreciation, \$5M in maintenance fees and \$3M in other expenses. The loss was \$42M.
- V. The profits and losses of the P/S are allocated to the partners as they are, so the losses were allocated to the three companies by \$14M.

GAAR & SAAR

Anti avoidance rules are generally divided into two main categories namely "general" and "specific".

SAAR (Specific Anti-Avoidance Rules)

Thin Capitalization rule, Earning Stripping rule, CFC rule, ...

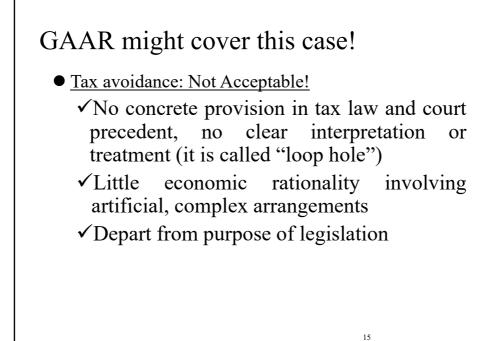
- GAAR (General Anti-Avoidance Rule)
- \checkmark A set of broad and general principles-based rules within a country's tax code designed to counteract the perceived avoidance of tax

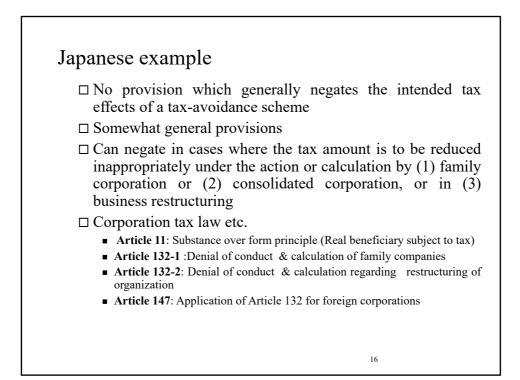
✓ Provides the taxing authority a mechanism to deny the tax benefits of transactions or arrangements which they feel do not have any commercial substance or consideration other than to generate a tax benefit

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GAARs & doctrines

- ➤ The conceptual starting point may be
 - avoidance of tax,
 - · abuse of rights
- fraus legis (abuse of law)
- · absence of economic substance or of business purpose
- · real economic character
- Avoidance is often regarded as being within the letter of the law but against its spirit
- > Abuse is generally less open to different interpretations
- GAARs generally override the strict application of a legal provision to prevent taxpayers from receiving benefits when the main purpose of a transaction is tax avoidance
- In certain countries, anti avoidance doctrines are not codified and have been developed by courts through case-law





Case #4

- i) Parent Company ("Pco") in Netherland. Subsidiary ("Subco") in Japan. Regarding new business in Japan ("New Biz"), both make an agreement of structuring Tokumei Kumiai ("TK"), a silent partnership.
- ii) Pco as Partner and Subco as Operator.

>TK has various unique characteristics:

- ✓ Ownership of TK's properties attributes Operator,
- ✓ Operator does business or invest,
- \checkmark Partner does not touch the TK business, New Biz in this case, and

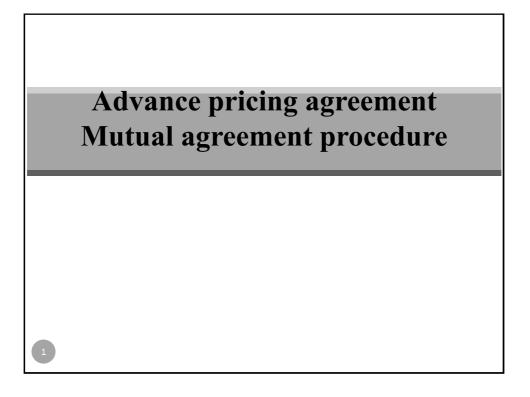
 \checkmark Profit shared is decided in the agreement,

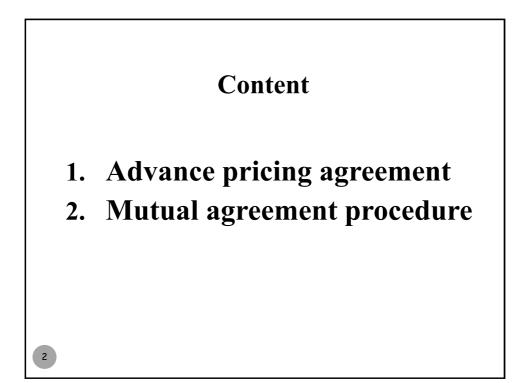
✓ Profit operator earned finally goes to Partner.

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Case #4

- iii) Pco invested \$90M to TK, and it was treated as Deposit. The Profit sharing ratio was 9:1 = Pco : Subco.
- iv) Subco finally made \$200M profit from New Biz.
- v) Under domestic tax act, Subco filed \$20M profit as taxable income (\$200M profit \$180M deduction).
- vi) \$180M was sent to Pco which was subject to Withholding Income Tax due to Japanese Income Tax Act which treats this payment as Domestic Source Income in Japan. Withholding Tax Rate is 20%.
- vii) Under Netherland law, in this case, the foreign source income is subject to tax in the source state, Japan.
- viii)Under Netherland-Japan Tax Treaty, this income was treated as "Other Income" which "shall be taxable" in the resident state.





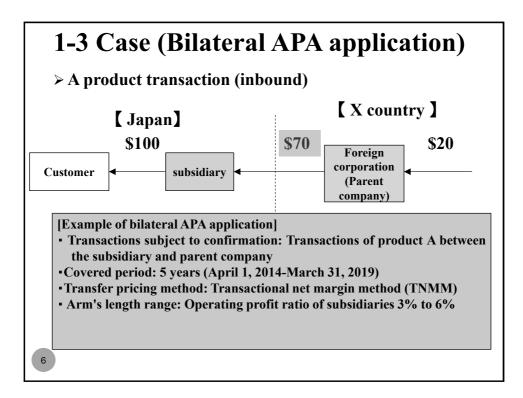
1. Advance pricing agreement

1-1 Advance pricing agreement

- The Advance Pricing Arrangement (APA) is a system for verifying the validity of the transfer pricing method that the company submitted to the tax authority, so that the tax authority does not impose a transfer pricing tax if the company reports the tax in accordance with this method.
- A company applying for an APA must submit to the tax authority a pre-confirmation request (APA Request) form that describes the related party transactions and periods to be confirmed (fiscal year) and the applicable transfer pricing method.

1-2 Purpose of the Advance pricing agreement

- The purpose of the APA is to ensure the predictability of the transfer pricing tax by confirming the transfer pricing method between the company and the tax authorities in advance, and to ensure that transfer pricing taxation (Transfer Pricing Legislation) is appropriate and to achieve a smooth execution.
- In order to be more predictable, it is required to check not only with local tax authority, but also with the tax authorities of the partner countries. This is called Bilateral APA. On the other hand, an APA of only one country is called a domestic (Unilateral) APA.



1-4 Features of Advance pricing agreement

- ➢ For future years.
 - \Rightarrow The tax audit covers past years.
- \succ a range for the arm's length price (ALP) is set.

 \Rightarrow during tax audit, tax is imposed at a specific level (e.g. 3% operating margin).

> For ALP calculations only public data is used.

 \Rightarrow For tax audit private data can be used.

Tax authorities do not use information (excluding facts) provided by companies in tax audit.

1-5 Domestic procedure for Advance pricing agreement

Step 1: Advance consultation (Pre-filing Meeting)

Step 2: Submit an APA Request

Step 3: Reviewing APA request (APA Evaluation)

Step 4: Notification of the result of APA Evaluation

Step 5: Submission of Annual Report (Annual Report)

(Note) An annual report is a report explaining that the company has filed a declaration that conforms to the details of the agreement, and the company that has been evaluated must submit it to the tax authorities every year.



1-6 Procedure for Bilateral advance pricing agreement

Step 1: Advance consultation (Pre-filing Meeting)

Step 2: Submit an APA Request

Step 3 Reviewing APA request (APA Evaluation)

Step 4: Mutual consultation (Mutual Agreement Procedure)

Step 5: Notification of the result of APA Evaluation

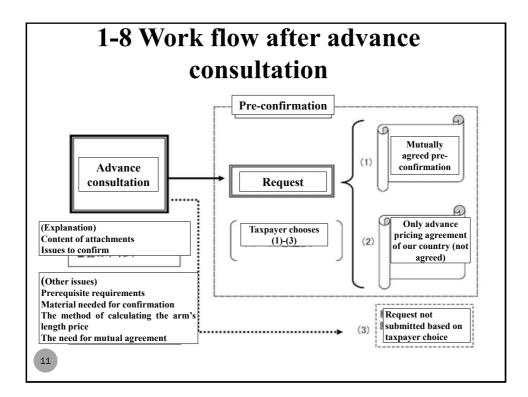
Step 6: Submission of Annual Report (Annual Report)

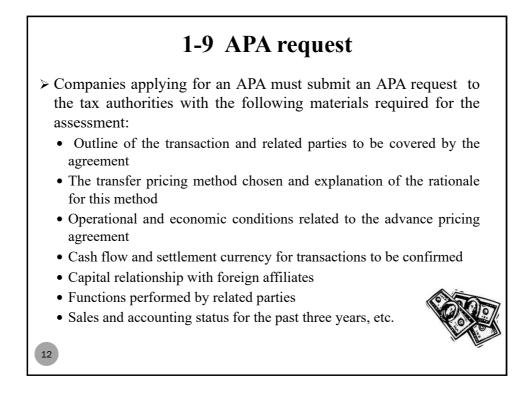
1-7 Advance consultation

> The advance consultation in the APA procedure is a preliminary meeting conducted based on the request of the company to apply for APA from the viewpoint of improving the convenience of the company and speeding up the work.

- Participants in advance consultation
- ➤ Company side
 - Accounting staff
 - Agent (Tax Accountant or Certified Public Accountant)
 - > Tax authority side
 - tax inspector in charge of pre-confirmation
 - Tax inspector in charge of MAP (only for bilateral APA)

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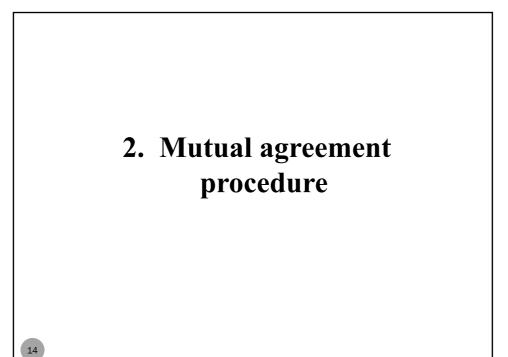


1-10 Reviewing APA request

> After receiving the APA's request, the tax inspector will start the review immediately. The main items to review are as follows:

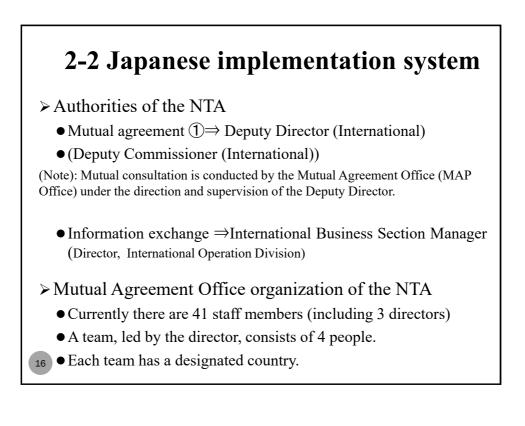
- Transfer pricing method and verification target corporation (Tested Party)
- Transactions and periods to be covered
- Comparable Uncontrolled Transaction
- Profit split ratio (for PS method)
- Comparability Adjustment
- ALP Range
- Compensating Adjustment
- Critical Assumption



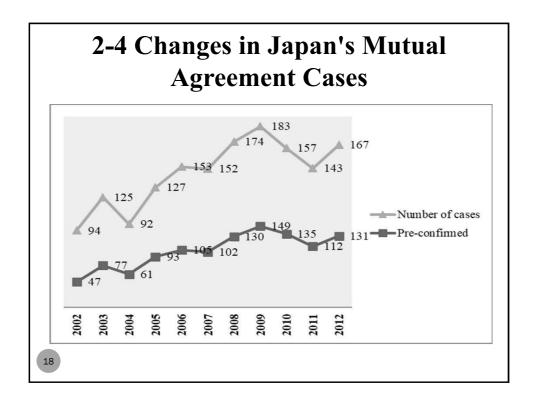


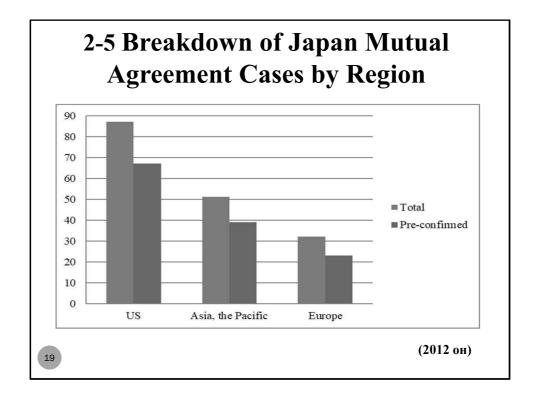
2-1 What is mutual agreement procedure

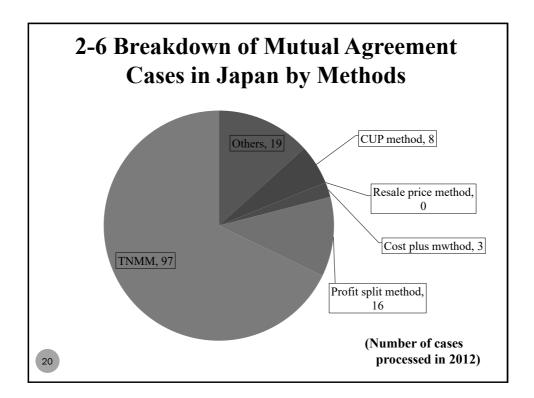
- Mutual agreement procedure (MAP) is based on the provisions of the tax agreement, for example, when international double taxation occurs due to transfer pricing taxation or when a company requests a bilateral APA, this issue must be resolved with the tax authorities.
- The MAP is usually conducted in a face-to-face manner based on the taxpayer's request, with the competent authorities of the home country and the partner country.
- > Both tax authorities must implement the terms agreed in the MAP.



2-3 Types of Mutual Agreement Cases in Japan		
	(by end of 2012)	
Type of case	Number of cases	
АРА	131	
Transfer pricing taxation	30	
Others (Permanent establishment, withholding tax etc.)	6	
Total	167	
17		

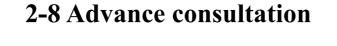








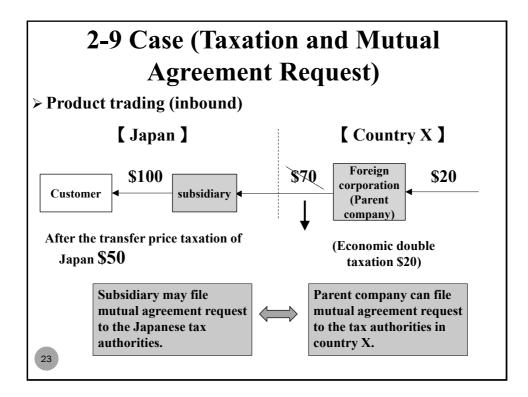
- Step 1: Advance consultation
- Step 2: Submission of MAP Request
- Step 3: Apply for mutual consultation to partner country
- Step 4: Mutual consultation ①⇒ Agreement or disagreement
- Step 5: Exchange letters between tax authorities
- Step 6: Notification to taxpayers and related departments



- Advance consultation in the MAP procedure is a prearrangement based on the request of the taxpayer to file a MAP from the viewpoint of improving the convenience of the company and speeding up the business.Урьдчилсан уулзалтад оролцогсод
 - Company side

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- Accounting staff
 - Agent (Tax Accountant or Certified Public Accountant)
- Tax authority side
 - tax inspector in charge of advance price
 - Tax inspector in charge of MAP (only for bilateral APA)



2-10 Submission of Mutual Agreement request

- Taxpayer filing a MAP must submit a request for mutual agreement to the NTA Mutual Agreement Office with the following materials:
 - Copies of documents proving taxation, such as a letter of correction
 - A document describing the details of the facts related to taxation and the assertions of the parties
 - Filed complaint or copy of claim submitted to resolve disputes (if complaint or claim is being filed)
 - Documents showing the relationship of capital or control between the parties (for cases of transfer pricing)
- Copy of mutual agreement request to partner country (if MAP is filed with partner country), etc.

2-11 Request to partner country for mutual agreement

- ➢ If the MAP request is deemed to be justified, the Mutual Agreement Office will send a request in written for a mutual agreement to the partner country.
 - After the partner country accepts the request, the Mutual Agreement Office sends a document (Position Paper) explaining its position to the partner country and coordinates the consultation schedule.

(Note) Contents described in Position Paper

- Transfer pricing taxation \Rightarrow Details of taxation and its compatibility
- Pre-confirmation case \Rightarrow content of request and examination result

2-12 Implementation of mutual agreement

> Outline of Mutual Agreement

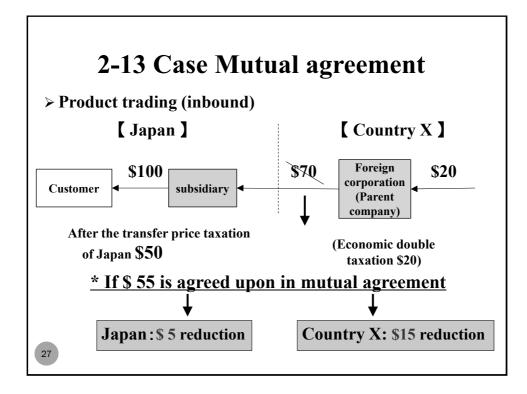
- •Venue: Home country or partner country (usually mutual)
- •Duration: 1 day to 2 weeks
- •Number of participants: about 6 (3 vs. 3)

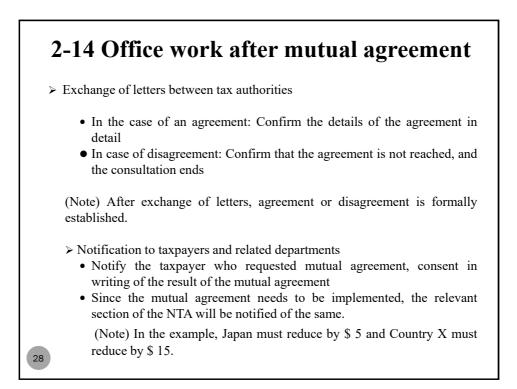
(Note) Taxpayers cannot participate

- •Interpreter: 1 or 2 (host country will pay)
- •Result: agreement or disagreement
- •Time required to process one case: about



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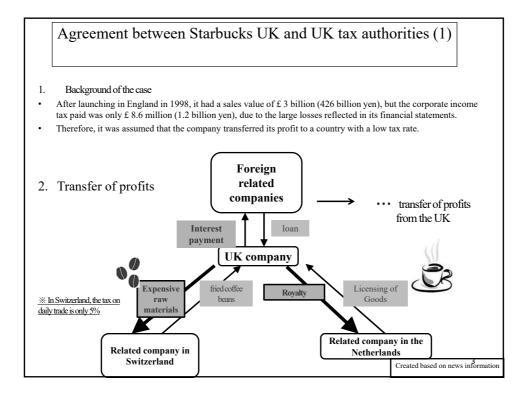


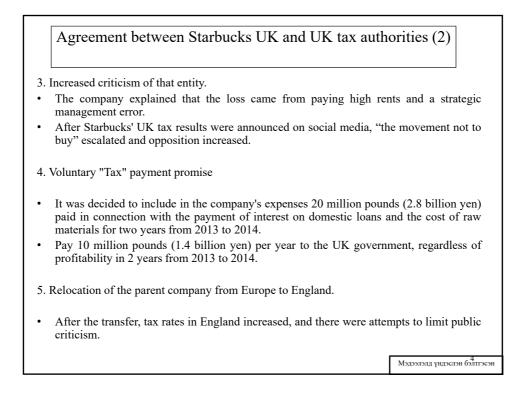


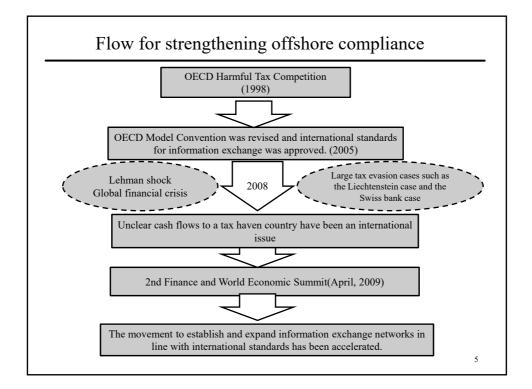
Exchange of information Basic knowledge

1

International criticism of cross-border tax evasion by MNEs AMAZON GOOGLE · Profit of sister company of Luxembourg has been · Company of the UK transferred its profit to subsidiaries in transferred. (Through the royalty) Ireland and Bermuda • In the UK, by 2011, sales revenue was of £ 3.3 billion (Through the royalty)? (495 billion yen), and the amount of tax levied was 1.8 * corporate income tax rate in Ireland is 12.5%. million pounds (270 million yen). • The British parliament questioned the company, calling But, in Ireland, corporate income tax is imposed based the management of that company. on place of management. Thus, income from foreign source is not taxed in Ireland, even that income was received by the company established in Ireland and its place of management was outside the jurisdiction of APPLE Ireland. * There is no CIT in Bermuda. · Whether the profits have been transferred from US In the UK, by 2011, sales revenue was of £ 400 million parent company to the Irish subsidiary. (60 billion yen), and the amount of tax levied was 6.0 (through the royalty and interest payments) million pounds (900 million yen). The English parliament said that, according to internal Between 2009 and 2012, a profit of \$ 74 billion was data, it was discovered that the British company was transferred to Ireland with a tax rate of 2%. selling its goods to its customers via the Internet. The American parliament has questioned the director Google's management has stated that direct marketing of the company. and sales to customers in England were not carried out by British company, but by a subsidiary in Ireland. Мэдээлэлд үндэслэн бэлтгэсэн

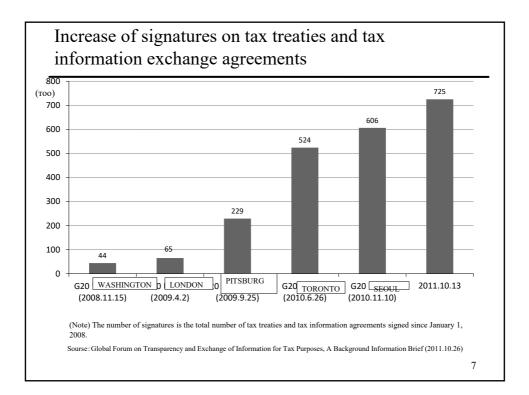






2nd Summit on Finance and World Economic Summit (Extract) (02 April, 2009, LONDON)

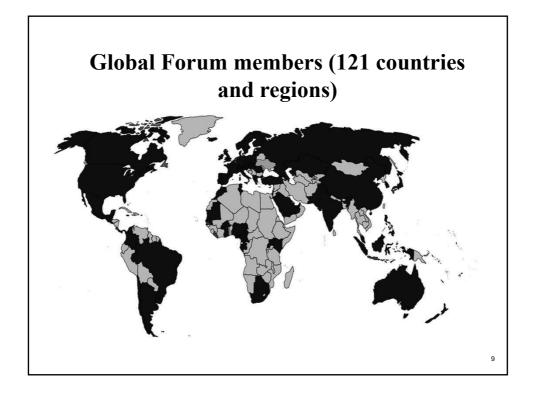
Implementation of measures for non-cooperative jurisdictions, including tax havens. We are ready to impose sanctions to protect the fiscal and financial systems. <u>The age of bank secrecy is over.</u> We note that the Organization for Economic Co-operation and Development (OECD) has today released a list of countries that have been assessed by the Global Forum as violating international standards for tax information exchange.



Global Forum on Transparency and Exchange of Information for Tax Purposes

- Forum on dialogue between OECD and non-OECD countries in the area of tax transparency and information exchange
- As of the end of April 2014, a total of 121 countries and regions, including nonmembers of the OECD, have participated.
- In order to implement international standards related to tax information exchange, it provides opportunities for mutual exchange of information and monitoring and evaluation of the status and implementation of the domestic law environment.
- There are three main items for peer review:

 Registration and storage of information (Shareholders information, proper registration and storage of financial records)
 The right of tax authorities to obtain information (for example, right to obtain an information from financial institutions)
 Exchange of information between tax authorities (information handling, timely exchange of information, provision of information irrespective of tax benefits of the country)



G20 Statement (related to OECD Global Forum)

Statement by G20 Finance Ministers and Central Bank Governors (February 2014: Sydney)

(Para 9) We urge all jurisdictions that do not comply with existing standards for information exchange on demand to promptly comply and sign the Multilateral Treaty on Mutual Administration without further delay.

We are ready to provide more stringent incentives to 14 countries / regions that do not qualify for a Phase 2 assessment.

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1. Exchange of particular information (based on request)

This means that when it is not enough to conduct a tax audit based on available internal information, send a request to the country/region and tax administrations (foreign tax authority) with a tax agreement to receive information.

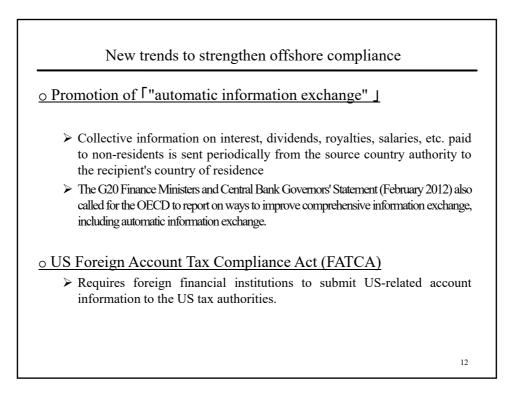
This is an effective tool when the business partners of taxpayers are abroad, and it is impossible to use the information to conduct a tax audit sufficiently.

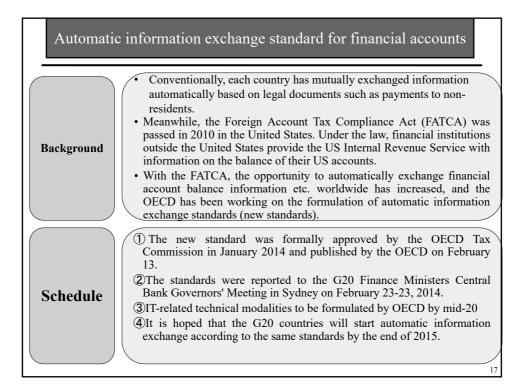
2. Spontaneous exchange of information

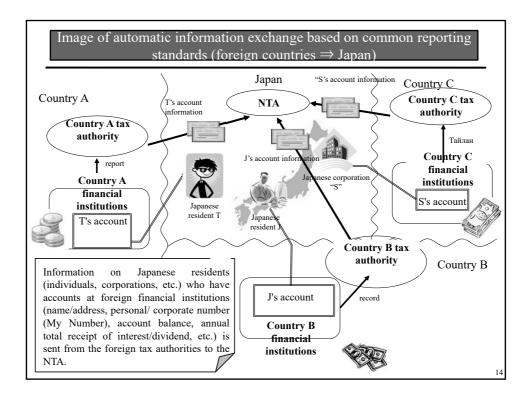
Spontaneous exchange of information has been found to be useful to foreign tax authorities thanks to information obtained during an investigation of taxpayers in their country.

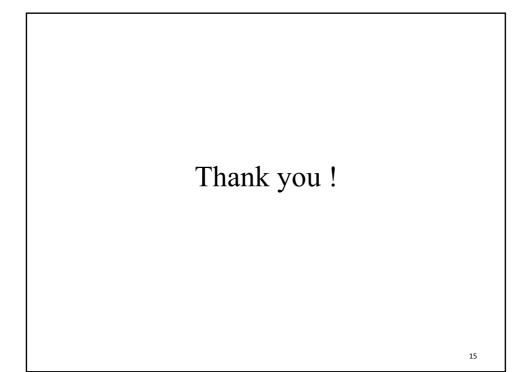
3. Automatic exchange of information

Information about the payment of interest, dividends, royalties, etc. to non-residents, ascertained from statutory reports, etc., is sent from the tax authority in the country where the interest, dividend, etc. is paid to the tax authority in the receiving country.









Advanced international taxation training

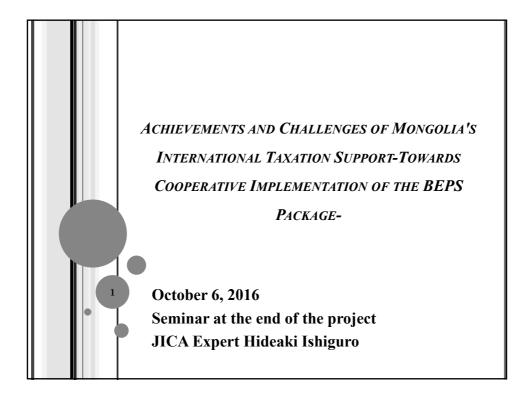
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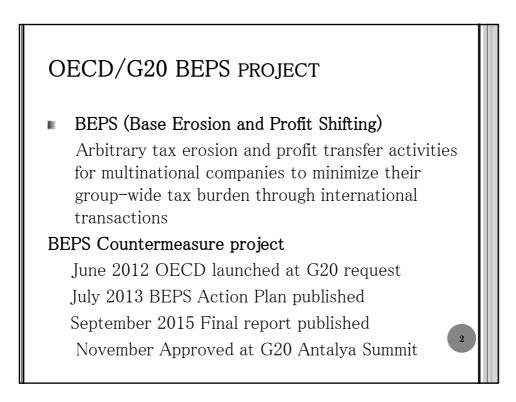
	2017/9/11	9/12	9/13	9/14	9/15
	Mon	Tue	Wed	Thu	Fri
(9:00-12:00)	International tax (BEPS)	Transfer pricing (TPM)	Transfer pricing (Case study)	Transfer pricing (Case study)	Transfer pricing (Case study)
	Ishiguro	Kodera	Tajino	Tajino	Tajino
(13:00-16:00)	Transfer pricing (BEPS)	Transfer pricing (TPM)	Transfer pricing (Case study)	Transfer pricing (Case study)	Transfer pricing (Case study)
	Kodera	Kodera	Tajino	Tajino	Tajino

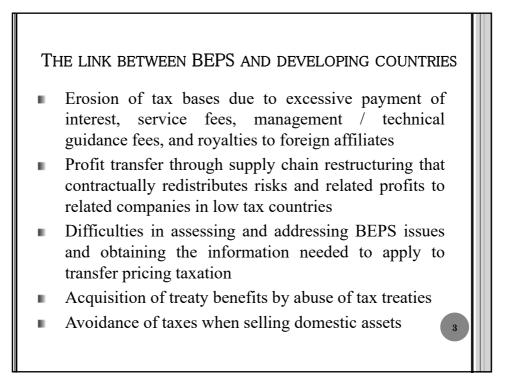
Name of Inspectors

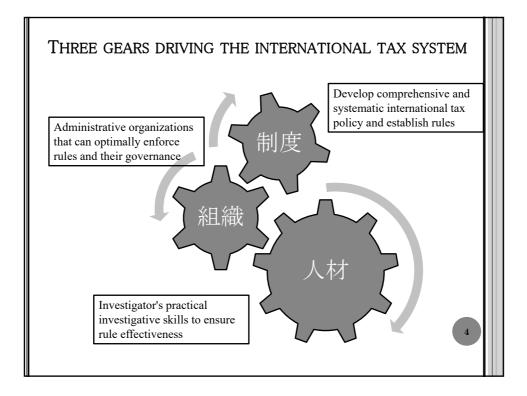
No	Name	Affiliation
1	Ch.Erdenechimeg	Senior tax inspector, Tax Administration and Cooperation Department, GDT
2	Kh.Suvd-Erdene	Tax inspector, Public Administration and Management Department, GDT
3	N.Jargaltsetseg	Tax inspector, Taxpayer Relations Department, GDT
4	J.Tserentsoo	Tax inspector, Taxpayer Relations Department, GDT
5	A.Suvdaa	Tax inspector, Taxpayer Relations Department, GDT
6	G.Enkhjin	Tax inspector, Tax Revenue Department, GDT
7	Ts.Bayarmaa	Tax inspector, Internal Audit Department, GDT
8	B.Ariungerel	Tax inspector, Risk Management Division, GDT
9	N.Tuul	Tax inspector, Training Center, GDT
10	Sh.Undraa	Tax inspector, Training Center, GDT
11	B.Zolzaya	Tax inspector, Training Center, GDT
12	B.Batchimeg	Tax inspector, Taxpayer Relations Department, GDT
13	S.Gunjinlkham	Tax inspector, Taxpayer Relations Department, GDT
14	D.Batjargal	Senior tax inspector, Tax Audit and Methodology Division, SBRAD
15	S.Tugsjargal	Senior tax inspector, Mining and International Taxation Division, SBRAD
16	Ts.Delgermaa	Tax inspector, Mining and International Taxation Division, SBRAD
17	G.Byambasuren	Tax inspector, Mining and International Taxation Division, SBRAD
18	P.Otgonsuren	Tax inspector, Tax Audit and Methodology Division, SBRAD
19	N.Bolorchimeg	Tax inspector, Tax Audit and Methodology Division, SBRAD
20	N.Munkhdavaa	Tax inspector, Tax Audit and Methodology Division, SBRAD
21	N.Khandkhuu	Tax inspector, Tax Audit and Methodology Division, SBRAD
22	Ts.Ishjamts	Tax inspector, Tax Audit and Methodology Division, SBRAD
23	B.Tugsjargal	Tax inspector, Tax Audit and Methodology Division, SBRAD

24	Sh.Enkhjargal	Tax inspector, Tax Audit and Methodology Division, SBRAD
25	Yo.Munkhbat	Tax inspector, Taxpayer Relation Division, SBRAD
26	Sh.Batzaya	Tax inspector, Taxpayer Relation Division, SBRAD
27	B.Urantsetseg	Tax inspector, Risk and Statistics Division, SBRAD
28	Ts.Tuvshinbayar	Tax inspector, Tax Revenue Division, SBRAD
29	G.Banzragch	Tax inspector, Tax Revenue Division, SBRAD
30	Kh.Altankhuu	Tax inspector, Administration Division, SBRAD
31	O.Tsend-Ayush	Tax inspector, Tax Audit and Methodology Division, Capital City Tax Office
32	J.Erdeneburen	Tax inspector, Administration Division, Capital City Tax Office
33	L.Davaasuren	Tax inspector, Bayazurkh District Tax Office
34	B.Bat-Erdene	Tax inspector, Chingeltei District Tax Office
35	Ch.Lkhamragchaa	Tax inspector, Chingeltei District Tax Office
36	D.Solongo	Tax inspector, Sukhbaatar District Tax Office
37	Ts.Undarmaa	Tax inspector, Songinokhairkhan District Tax Office
38	B.Ochirkhuyag	Tax inspector, Khan-Uul District Tax Office
39	S.Naranbaatar	Tax inspector, Dornod Province Tax Office
40	Ts.Unurmunkh	Tax inspector, Orkhon Province Tax Office
41	S.Duubayar	Tax inspector, Umnugovi Province Tax Office
42	L.Munkhtuul	Tax inspector, Legal affairs division, GDT







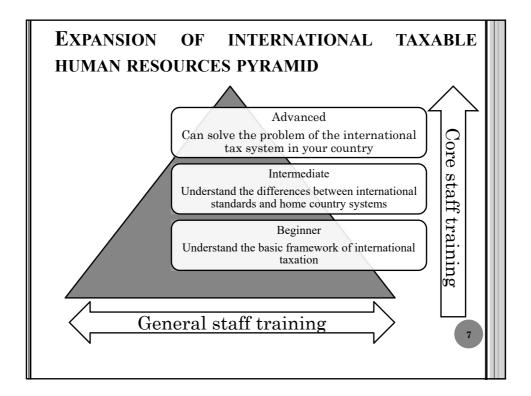


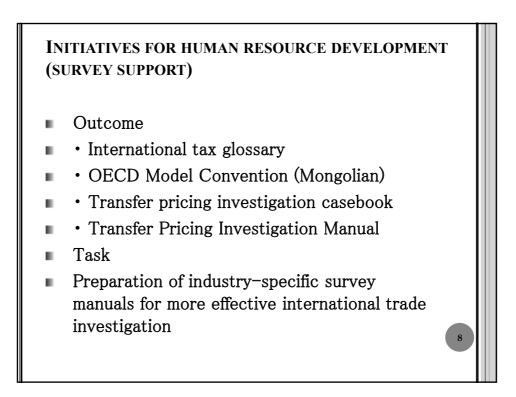
EFFORTS TO EXPAND INTERNATIONAL TAXATION SYSTEM

- Outcome
- Proposal for amending the transfer tax related provisions
- Advance confirmation system (APA) Article 4
- Transfer price calculation method (TPM)
 Article 12
- Task
- Revision of domestic laws and tax treaties based on BEPS project proposals (enactment of excessive interest tax system, expansion of permanent establishment (PE), expansion of transfer pricing tax system, etc.)

EFFORTS TO EXPAND ORGANIZATIONAL FUNCTIONS

- Outcome
- Enlightenment and promotion activities for the chief and investigators through the International Cooperation Bureau to utilize the information exchange system based on tax treaties
- Task
- Creating a more specialized and functional organization from a medium- to long-term perspective to respond to international tax issues





INITIATIVES FOR HUMAN RESOURCE DEVELOPMENT (TRAINING)

- Achievements (about 38,000 man days)
- Core staff training (36 days, 180 people mentioned)
- Core staff dispatch to Japan (26 days, total 43 people)
- Japan National Tax Agency staff invitation training (6 days, 93 people in total)
- **o** General staff training (83 days, 145)
- Task
- Development of core staff to advanced level
- Systematic and continuous training of staff in charge of international taxation

TP & BEPS Q&A

Expert Kodera Toshinari

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Contents

- Documentation by 2010 OECD TP Guidelines
- Japanese documentation before BEPS
- 2015 @ Outline of BEPS documentation (BEPS Action Plan 13)
- 2016 Japanese documentation support after BEPS

Q 2010 OECD TP Guideline Chapter 5 What is the content of documentation?

A Described in the following paragraph.

Para. 5.1

The documentation is intended to provide guidance on resolving TP issues and facilitating tax audits.

Pare. 5.4

Taxpayers should prepare documents deemed to have made an effort to comply with the arm's length principle on the information on which the transfer pricing calculation was based and on the selected calculation method.

Para. 5.7

These documents are indispensable for the authorities to determine whether the transaction price set between the related parties is based on the arm's length principle.

Q What is the content of Japanese documentation before **BEPS**?

Q: Prior to BEPS, did the documentation provision had existed in Japan?

A: YES, in order to implement the TP tax system to be properly enforced, materials necessary for taxation be smoothly collected by the tax authorities.

Q: What is Japanese documentation before BEPS?

A: Under Article 66-4 of the Measures Law, it was required to submit documents on the content of foreign-related transactions and documents for calculating arm's length price. Something like a BEPS local file.

Q: Is submission mandatory?

A It was not an obligation. However, tax office would be able to estimate the transfer price and tax amount, if there is no submission from company and it is necessary to be submitted without delay when requested.

Q: What are the documents related to foreign-related transactions pre-BEPS documentation in Japan?

A: The following documents:

- Details of assets to be dealt with, details of services
- Functions performed by the parties and risks borne
- Q: Give examples of functions and risks?
- Intangible assets used by parties
- Contract
- How to set prices and the negotiation process
- Details of the profit and loss of the parties involved in the transaction
- Market analysis of transactions
- Business policies of the parties to the transaction
- Whether there is any other transaction closely related to the transaction and its content

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Q What documents are used to calculate arm's length price in pre-BEPS documentation in Japan?

A The following 3:

Specific calculation method of arm's length price

Q: Raise the all TPM and describe its features?

Matters related to selection of comparable transactions Q: What should be considered when selecting?

Reasons / methods for adjusting the differences for comparable transactions Q: Give an example of difference adjustment?

Q What was the problem in BEPS Action Plan 13? And what is it?

A1: Information on the whole picture of a multinational corporate group transaction (called a BIG PICTURE in the OECD) in order to achieve proper transfer pricing taxation on overseas transfer of income through intragroup transactions by a multinational corporate group.

A2: There are the following three.

1. Country-by-Country Report

Have report information on income, economic activity, and tax payments in each country to each country's tax authorities.

2. Master File

Report on information for the entire multinational corporate group.

3. Local File

Information by subsidiary.

Q What are the recommendations in BEPS Action Plan 13?

A The following are recommendations.

1. Country report

For multinational groups with consolidated revenues of more than \notin 750 million (approximately $\underbrace{100}$ billion) in the last fiscal year, information on the activities of the groups by country (revenues by country, profit before tax (loss) before tax) Tax amount, distribution of tax payments, etc.) to the tax authorities.

The information submitted to the tax authorities is, in principle, shared among the tax authorities of the countries concerned through information exchange, and is used for analysis of high-level transfer pricing risks.

Q What kind of information exchange?

2. Master file

Request the tax authorities to provide information about the global economic activities of the multinational group, including an overview of its organization, finances and operations.

3. Local file

Requests the creation and storage (documentation) of detailed information that is the basis for calculating arm's length prices in related party transactions

Q BEPS Action Plan 13 and Japanese tax reform

A: In Japan, we revised the above items from 1 to 3 as "country by country report items", "business overview report items", and "documents necessary for calculating arm's length price" in the FY2016 revision.

Q What is the content of Japan's 2016 tax reform for BEPS Action Plan 13? Part 1

A1: In the 2016 tax reform, information on the activities of each country in the multinational enterprise group ("Country-by country report items ", information on the global business activities of the multinational group (" Business Overview Report Items ").Section II (Master File) ") and detailed information for calculating arm's length prices in transactions with related parties("Local files") must be provided (or created and stored) to the tax office.

A2 For the country-by country report items and master file, the total revenue amount of the final parent company, of the multinational corporation group of is within one year from the day following the end of the fiscal year of the parent company, it was decided to provide it by the national tax electronic filing and tax payment system (e-Tax).

A3: Of these, information on national reports will be provided to tax authorities in the country of residence, such as members of multinational enterprise groups, based on automatic exchange of information such as tax treaties. In Japan, by September 2018, the provision of information to foreign tax authorities and the provision of information equivalent to country-specific reporting items from other countries will begin.

Q2. How do submit ALP calculation documents?

A1 The documents required for calculating the arm's length price (ALP) must be prepared by the deadline for filing a tax return and stored in Japan.

A2 Regarding transactions with foreign related parties, corporations with a total transaction amount of 5 billion yen or more in the previous fiscal year or a total amount of intangible asset transactions of 300 million yen or more must submit a local file by the deadline for filing a tax return. It must be created or acquired and stored. This local file must be presented or submitted by a certain date from the date the investigator requested it to be presented or submitted (applicable for fiscal years beginning within April 1, 2017).

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Q Japan Revision What should be included in the "Country by country Report"? (Created by parent company) Is it subject to information exchange?

A1 The following information of the multinational company group for each country where the parent company / subsidiary is located

Financial information such as gross income, income, tax, capital, etc.

- Number of employees
- Tangible assets
- Main business, etc.

Q What information exchange?

Q What are the key points of the revisions "Country by Country report items" in the Japanese revision?

A1 Provide useful information for high-level transfer pricing risk assessment.

A2 Information on the amount of income, profit before tax, amount of tax paid, etc. in each country where the business of the multinational enterprise group is conducted.

A3 There are two types of obligation to provide:

1. Treaty method (BEPS method)

If the ultimate parent company is Japan, the Japanese domestic corporation submits it to the Japanese tax authority, and if it is foreign, submits it to the foreign tax authority (Article 66-4-4) of the Measures Law.

2. Subsidiary method

Subsidiary in Japan or foreign corporation with PE (Same as above)

Q Japanese revision to be included in master file (business report) (created by parent company)?

A The following documents.

- Group organization chart
- Business summary
- Information on intangible assets held
- Information on financial activities within the group
- Financial status and tax payment status of the entire group

Q: What are the points of the "Master File (Business Overview Report Items)" in the Japanese revision?

- A1 "Provide a blueprint" for the entire group so that tax authorities can identify significant transfer pricing risks.
- A2 Provide information on the organizational structure, business outline, financial status, etc. of the multinational enterprise group.
- A3 Report also domestic companies that are members of multinational corporate groups and foreign companies which have PE in Japan.
- A4 The deadline for provision is within one year from the day after the end of the reporting fiscal year, and is reported in Japanese or English by electronic filing (e-tax) (Article 66-4 (5) of the Measures Law)
- A5. The reporting method is a subsidiary method.

Q What is the content of the local file of BEPS? (Created separately by parent and subsidiary)

A The following documents.

- Organization chart
- Management strategy
- Major competitors
- Major Affiliate Transactions and Transaction Background
- Transfer Pricing Basis
- Financial statements, etc.

Q What is the point of the BEPS "local file" in Japan revision?

A1 Provide detailed information on individual related party transactions.

A2 Provide financial information on a specific transaction, comparable analysis, and information on the selection and application of the optimal TPM (transfer pricing method).

A3 Submit on paper. It doesn't have to be an e-tax. Q why?

Q How long is the storage period and the effectiveness of the document amended in Japan guaranteed?

A1. The storage period is 7 years in principle.

A2 There is a security measure if each is not submitted.

(1) Country report items

➡ Fine of 300,000 yen or less

(2) Business Overview Report Items (Master File)

 \Rightarrow Fine of 300,000 yen or less

(3) Documents required to calculate arm's length price (local file) \Rightarrow Estimated taxation if no documents are submitted within a certain range after the authorities request by the date designated by the staff

Q Are there exemptions for the three files in Japan?

- A. The exemption is exists as follows:
- (1) Country-by country reporting items: consolidated group revenues (less than 100 billion yen)
- (2) Master file: Same as above
- (3) In the case of the following small transactions, the total transaction amount of the previous term is less than 5 billion yen
- And the total amount of intangible asset transactions is less than 300 million yen (determined by individual transactions)

Q: In Japan, is there a TP tax if the local file creation is exempt?

A: TP tax system is applicable.

Even if the local file is exempted, it is subject to the TP tax system and there is a survey. You may be required to submit documents that are deemed important for calculating the survey ALP.

In addition, documents required for ALP calculation must be submitted within "45 days" specified by the investigator.

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Q: What is the relationship between each file and the transfer pricing investigation?

A: The procedure is as follows:

- 1. Transfer pricing surveys are conducted to check whether transactions between a corporation and its foreign affiliates are done at arm's length prices.
- 2. Therefore, in the TP administration guidelines, is there any attachment of "local file" or "specification for foreign-related parties" (Appended Table 17 (4)) in the final return? In addition, the content of the description is to be checked (TP Administrative Guideline 3-3).
- 3. Identify problems with the TP from the following documents described in TP Business Operation Guidelines 3-4. Documents such as capital relations, business relations, shareholder relations, securities report relations, handling item relations, business relations, etc.

Q: What is the most important local file in the TP investigation?

A: The following documents are used to calculate the arm's length price for foreign-related transactions.

- Documents describing the TP calculation method selected by the corporation and the reasons for the selection, and other documents prepared by the corporation in calculating the arm's length price → This document is especially important! ! !
- 2) Documents describing the matters concerning the selection of comparable transactions for the relevant foreign transaction adopted by the corporation and the details of the comparative transactions, etc.
- 3) Documents for calculating the amount of money calculated as belonging to the corporation and foreign-related parties pertaining to the corporation by these methods when the corporation selects the TP calculation method
- 4) Documents describing the reason for calculating the arm's length price of the business as a single transaction with a plurality of foreign-related transactions and the contents of each transaction
- 5) Documents describing the reasons for making adjustments to the comparable transactions, etc., and the method of making such adjustments

TPM & BEPS Q&A

JICA expert Kodera Toshinari

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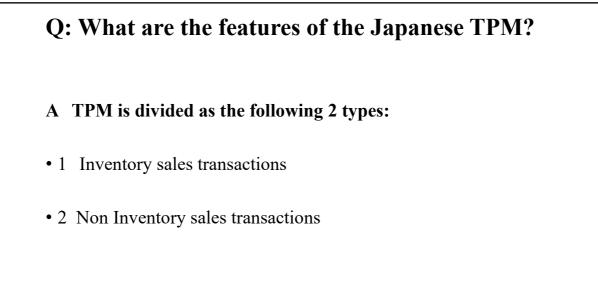
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Contents

(1) Understand laws and regulations and TPM calculation methods in the casebook (attached sheets and slides)

(2) In order to make the case study useful, understanding of all figures and tables, such as observations (distributed separately by Kodera)

(3) Understanding TP-related BEPS action plan



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Q What is "Inventory sales Transaction"?

A Divide into the following groups:

• Group A: Traditional transaction 3 methods in the law and other 7 methods

• Group B: Methods <u>consistent with</u> the traditional 3 methods in the law and other 7 methods in the cabinet order.

Q What is "Non inventory sales transaction"?

A Divide into the following groups:

- Group C: Methods <u>equivalent to</u> the traditional transaction 3 methods in the law and other 7 methods in the cabinet order
- Group D: Methods <u>equivalent to</u> methods <u>consistent with</u> the traditional 3 methods in the law and other 7 methods in the cabinet order

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Q What is "Traditional 3 methods"?

- A There are 3 methods as follows:
- Comparable uncontrolled price (CUP)
- Resale Price method (RP)
- Cost plus method (CP)

Q What is the Consistent method?

- A: For example, a method based on the RP method that compares related party transactions with unrelated party transactions using gross profit margin is the result of simply subtracting cost of sales from sales as a profit level indicator in comparison. This is a case where a "deemed" gross profit rate is used instead of a certain gross profit rate.
- Calculation example
- X% = Target transaction SG & A (sales cost) \div Target transaction sales
- Verification target operating margin + X% = Verification target gross profit ratio (α)
- Comparable transaction operating margin + X% = Comparable transaction "Minute" Gross profit margin (β) \Rightarrow A is compared with β . This is a "method that follows" the RP method using the "deemed" gross profit margin

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Q: Isn't the method based on the RP consistent method of the previous slide practically TNMM?

- A YES
- R Although this approach seems to be comparing gross profit margins, it is practically necessary to add the SG&A level of the verified company to the operating margin of the comparable company. Because it is a comparison in operating profit, the same as TNMM.
- Therefore, making SG&A adjustment would increase comparability at the gross margin level, but it would only be an adjustment for the difference in expenses spent, up to an adjustment for the return associated with those expenses. This does not significantly reduce the comparability requirement. It should be used only when the difference is small, thus this is not an almighty adjustment method.

Q: Why was TNMM introduced late in Japan?

- A1: TNMM is a profit-making method that forces taxpayers to report a statistical profit level based on the US Comparable Profit Method (CPM), a method approved by the OECD based on the Comparative Profit Law.
- A2: In other words, because it relies heavily on external statistical data, simple desk-based verification work can lead to a large amount of money being set.
- A3. There was also the danger of infringing the property rights guaranteed by the Constitution.
- However, since the enforcement of the TP tax system centered on the three basic laws was unreasonable, foreign countries who were reluctant to introduce TNMM as well as Japan once introduced one after another. (2004)

Q What is the significance of introducing TNMM in Japan?

A For tax authorities and taxpayers, the simpler TPM

Japanese tax authorities have also introduced the TNMM at major tax bureaus to introduce expensive databases containing corporate information from around the world. This is a statement from the TNMM that Japan's tax authorities are willing to actively conduct TP investigations focusing on statistical approaches.

Q How is the comparability analyzed?

- See illustrations in casebook
- "Flow of method for calculating arm's length price" (Example of comparability analysis)
- "Example of selection procedure for comparison target transaction"

Q: What are the other 7 methods?

A There are the following 7 methods:

(PS (Profit Split) methods)

- ① Comparable PS
- (2) Contribution PS
- ③ RPSM (Residual Profit Split Method)
- (TNMM (Transactional Net Margin Method)
- (4) TNMM (Import)
- (5) TNMM(Export)
- (6) TNMM(Import & Berry ratio)
- ⑦ TNMM(Export&Berry ratio)

Q: Did you understand the laws and calculation examples in the first half of the casebook?

Q1: TP law was written, did you learn English law and technical terms in particular?

Q2: In the illustrated calculation section, are there any mistakes in the calculation?

Q: Why does BEPS have a TP-related action plan?

- A: A tax evasion called the "cash box scheme" was occurring. In addition, it was necessary to enhance TP guidelines, including risk analysis.
- The scheme establishes a subsidiary (cash box) in lightly taxable countries that does not carry out any special economic activities but has abundant funds, in which the legal ownership of intangible assets and contractual risks are attributed, and profits are reduced. This is one of the triggers for the start of the BEPS discussion.

Q What is BEPS's decision on "cash box"?

- A: This cash box does not develop intangible assets and does not share control risk, so it cannot be said to be creating value.
- Therefore, unreasonable income does not belong to the cash box.

Q What are the contents of the BEPS Action Plans 8 to 10 related to the transfer pricing tax system?

- A: The principle of "coincidence between transfer pricing results and value creation" was set out.
- In other words, the principle that "value creation should be profitable."
- Action Plan 8: We are considering what would happen if we applied this principle to related transactions of intangible assets.
- • Action Plan 9: Analyzes what to think in terms of contractual risk allocation and relations with subsidiaries with ample capital.
- Action plan 10: Consider the possibility of applying TNMM, which is expected to be the optimal taxation method in line with value creation, when companies in a multinational enterprise group contribute to each other and generate greater profits. ing.

Q What is the outline of Action Plan No. 8?

A: The definition of intangible assets has been defined, and guidance has been expanded on how to attribute returns on intangible assets and how to calculate prices.

As a result, Chapter 6 of the TP Guidelines (special considerations for intangible assets) has been completely revised.

Q: Action Plan 8: What is the definition of an intangible asset transaction?

- A Defined original intangible assets that were not in the conventional TP guidelines
- Intangible asset requirements
- 1. Those that are not tangible assets or financial assets
- 2. Possible to own or manage for the purpose of use in commercial activities
- 3. Compensation is paid for its use or transfer in comparable arm's length transactions

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Q: Action Plan 8: What is the legal ownership of intangible assets?

- A From a tax perspective, the fact that one has legal ownership of an intangible asset alone does not necessarily mean one will enjoy the right to profits gained from the use of the intangible asset.
- Companies within the group that perform critical functions, manage financially significant risks, and contribute to assets receive appropriate compensation that reflects their contributions with an appropriate depiction of actual transactions.

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Q Action Plan 8 adopted the Income Compatibility Standard. Does this violate ALP principles?

- A Do not violate.
- 1. Regarding intangible assets that are difficult to evaluate between independent companies, even if the initial transfer price is conservatively estimated and set low, depending on the subsequent results, such as the success of commercialization, the initial transfer price may be renegotiated, or linked to sales at the transferee, and taking additional action at the transferor.
- If so, if there is a company that has completed a single transaction at a low transfer price for an intangible asset difficult to value, it will be redrawn as if the original transfer price had been renegotiated. This does not violate the arm's length principle, even if based on subsequent results.

Q: What is the outline of Action Plan 9?

- A: Regarding risk
- (Understanding Kodera) Intangible assets are the essence of revenue, the value that already exists
- However, the possibility that risk may create value in the future (ie uncertainty)

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Q What are the risks in Action Plan 9?

- A: It was defined as "the effect of uncertainty on the purpose of the business."
- The word `` risk " has been used more than 500 times in conventional TP guidelines, but it was not defined.

Q In Action Plan 9, Is the Effective Risk Controller a Beneficiary?

- A YES !
- R If an entity assumes contractual risks but does not have effective and well-defined controls over those risks,

 \Rightarrow If controlling the risk in effect, even if not taking the risk, it is assumed that distributing the benefits corresponding to the risk to entities that have the financial resources to handle the risk.

Q: What is the outline of Action Plan 10?

• A: Adopting the Non-recognition

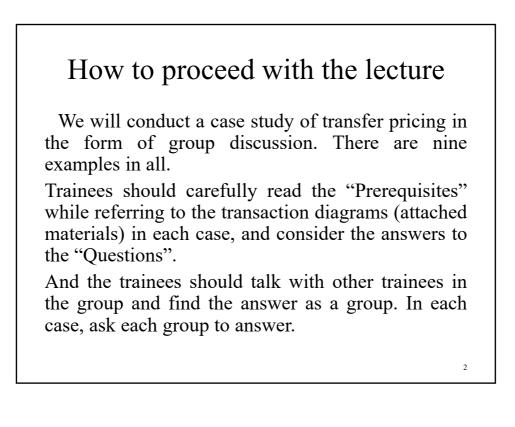
- Until now, transactions that are not and rarely conducted between independent companies, that is, transactions that are not commercially reasonable, may transfer profits to related companies in the group in lightly taxable countries.
- Therefore, the BEPS Final Report allows exceptional disregard of a transaction between related companies in the determination of transfer pricing if the transaction is not commercially reasonable.

Q: Are the following transactions eligible for "denial of transactions" in Action Plan 10?

- The manufacturing company, S1, has a large inventory and invests heavily in factories and machinery. And in the area where these commercial assets are located, floods frequently occur in recent years, and as a result, there is no active insurance market in this area. Under these circumstances, S2, an overseas affiliate, provides insurance to S1. The annual premium is 80% of the value of inventory and assets and is paid by S1.
- Q Is this transaction between S1 and S2 a commercially reasonable transaction?

TP Case Study

September, 2017 Prof. Mikio TAJINO



[Prerequisites]

- Japanese company P is a sales company of product A and product B, and established company S in country X 10 years ago as a subsidiary that sells product A.
- Company P sells product A to Company S, which sells it to approximately 200 third-party retailers in X.
- Company P has been selling product B to company T, a third-party agent in country X, at the same time as company S, and company T has sold it to retailers in country X.
- Product B is a product of the same type in terms of properties, structure, function, etc., although the product category (model number) in Product A differs from that of Product A.

[Question]

- When examining the transfer price of product A between P and S, which TPM should be considered first?
- When calculating the ALP by applying the selected TPM, what matters must be considered?

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Case 2

[Prerequisites]

- Japanese corporation S is a corporation that sells product A in Japan.
- Company P, the parent company of Company S in Country X, manufactures and sells Product A in Country X.
- Company S imports Product A as the sole importer of Company P and sells it to more than 10 third-party agents in Japan.
- The Japanese corporation T is an independent import general agent and a corporation that sells product B in Japan.
- The product B is not the same product as the product A, but is similar in properties, structure, function, and the like.

- When examining the transfer price of product A between P and S, which TPM should be considered first? In that case, which corporation should be the tested party?
- When calculating the ALP by applying the selected TPM, what matters must be considered?

[Prerequisites]

- Japanese company P is a sales company of product A and product B, and established company S in country X 10 years ago as a subsidiary that sells product A.
- Company P sells product A to Company S, which sells it to approximately 200 third-party retailers in X.
- Company P has been selling product B to company T, a third party in country X, at the same time as company S, and company T has sold it to retailers in country X.
- The product B is not the same product as the product A, but is similar in properties, structure, function, and the like.

[Question]

- When examining the transfer price of product A between Company P and Company S, what TPM can be considered? In that case, which corporation should be the tested party?
- When calculating the ALP by applying the selected TPM, what matters must be considered?

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Case 4

[Prerequisites]

- Japanese company P is a manufacturing and sales company of product A, and established company S in country X 10 years ago as a subsidiary to supply raw materials a of product A.
- Company S sells all raw materials a to Company P, and Company P manufactures product A based on it and sells it to third-party agents in Japan.
- Company P receives no supply of raw material a from companies other than Company S.
- The raw material a of the product A is traded worldwide on a commodity exchange, and there is a market price (market price) of the exchange.

- When examining the transfer price of raw material a between Company P and Company S, which TPM should be considered first?
- What should be considered when calculating ALP by applying the selected TPM?

[Prerequisites]

- Japanese company P is a manufacturer and seller of product A. Ten years ago, company P was established in country X as a manufacturing and sales subsidiary of product A.
- Company S purchases component a manufactured by company P, adds other components to it, manufactures product A, and sells it to third parties in X.
- Company P also provides maintenance and inspection services to Company S's manufacturing facilities.
- Company T, a third party in country X, purchases component a from company P, adds other components to it, manufactures product B, and sells it to third parties in country X.
- Company P sells the same parts a to Company S and Company T at the same price, and has the same transaction scale and contract terms.

[Question]

- 1. What kind of TPM can be considered when examining the transfer price of services provided by Company P to Company S?
- 2. What should be considered when calculating ALP by applying the selected TPM?

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Case 6

[Prerequisites]

Japanese company P is a company that manufactures and sells product A, and established company S in country X 10 years ago as a subsidiary that sells product A.

Product A is a product manufactured using the proprietary technology that is the result of P's research and development activities.

Company P sells product A to Company S, which sells it to about a dozen third-party agents in X.

Company S does not carry out unique advertising and sales promotion activities, but manages a certain amount of product A according to its own sales plan, and resells it in Country X.

- 1. When examining the transfer price of product A between Company P and Company S, what TPM can be considered? In that case, which corporation should be the tested party?
- 2. When calculating the ALP by applying the selected TPM, what matters should be considered and what should be used as a profit level indicator (PLI)?

[Prerequisites]

- 1. Japanese company P is a company that manufactures and sells product A, and established company S in country X 10 years ago as a subsidiary that sells product A.
- 2. Product A is a product manufactured using proprietary technology (intangible assets) that is the result of R & D activities of Company P.
- 3. Company P licenses the patent right and manufacturing know-how related to the manufacture of product A to Company S, and receives a royalty (Royalty) from Company S.
- 4. Company S purchases raw materials, etc. in country X, manufactures product A, and sells it to third-party agents in country X.
- 5. There are no inventory transactions between P and S.

[Question]

- 1. When examining the transfer price of the royalties paid by Company S to Company P, what TPM can be considered?
- 2. When calculating the ALP by applying the selected TPM, what matters should be considered and what should be used as a profit level indicator (PLI)?

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Case 8

[Prerequisites]

- 1. Japanese company P is a manufacturer and seller of product A, and established company S in country X 10 years ago as a subsidiary that manufactures and sells product A.
- 2. Product A is a product manufactured using proprietary technology (intangible assets) that is the result of R & D activities of Company P.
- 3. Company P sells component a for product A (the main component in which company P's proprietary technology is integrated) to company S, and licenses the patent right and manufacturing know-how related to the manufacture of product A. We have received a royalty from Company S (Royalty).
- 4. Company S manufactures product A by adding other parts to part a and sells it to about 200 third-party retailers in country X.
- 5. Company S gains high product recognition in Country X and maintains a certain market share by building and maintaining an extensive network of retail stores through its own advertising and sales promotion activities using a large number of salespeople.

- 1. What kind of TPM can be considered when examining the transfer price of the royalties paid by component a and company S to company P?
- 2. What should be considered when calculating the ALP by applying the selected TPM?

[Prerequisites]

- 1. Japanese company P is a sales company of product A, and established company S in country X 10 years ago as a subsidiary that sells product A.
- 2. Company P sells product A to Company S, which sells it to approximately 200 third-party retailers in X.
- 3. Prior to the establishment of Company S, Company P sold Product A to Company T, a third party in Country X, and Company T sold it to retailers in Country X.

4. The size and terms of the transaction between Company S and Company T conducted by Company P are the same except for the following points. Delivery conditions: Company S is CIF ⇔ Company T is FOB
 Payment deadline: 30 days for Company S 90 90 days for Company T (interest rate is 5%)

[Question]

How to adjust for differences when applying the CUP Method in the transfer pricing survey of Product A between Company P and Company S

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Thank you

Curriculum of the International Taxation special training

2017/11/27-2017/12/1

	11/27/2017	11/28/2017	11/29/2017	11/30/2017	12/1/2017
	Mon	Tue	Wed	Thu	Fri
(9:00-12:00)	International tax (BEPS)	Study on Mongolian case (Case 1-3)	Study on Mongolian case (Case 4-6)	Study on Mongolian case (Case 7-9)	Study on Mongolian case (Case 10)
	Kodera	Kodera and Ishiguro	Kodera and Ishiguro	Kodera and Ishiguro	Kodera and Ishiguro
(13:00-16:00)	Transfer pricing (BEPS)	Study on Mongolian case (Case 1-3)	Study on Mongolian case (Case 4-6)	Study on Mongolian case (Case 7-9)	Summary discussion
	Kodera	Kodera and Ishiguro	Kodera and Ishiguro	Kodera and Ishiguro	Kodera and Ishiguro

Name of Inspectors

No	Name	Affiliation
1	Ch.Erdenechimeg	Senior tax inspector, Tax Administration and Cooperation Department, GDT
2	Kh.Suvd-Erdene	Tax inspector, Public Administration and Management Department, GDT
3	N.Jargaltsetseg	Tax inspector, Taxpayer Relations Department, GDT
4	J.Tserentsoo	Tax inspector, Taxpayer Relations Department, GDT
5	A.Suvdaa	Tax inspector, Taxpayer Relations Department, GDT
6	G.Enkhjin	Tax inspector, Tax Revenue Department, GDT
7	Ts.Bayarmaa	Tax inspector, Internal Audit Department, GDT
8	B.Ariungerel	Tax inspector, Risk Management Division, GDT
9	N.Tuul	Tax inspector, Training Center, GDT
10	Sh.Undraa	Tax inspector, Training Center, GDT
11	B.Zolzaya	Tax inspector, Training Center, GDT
12	B.Batchimeg	Tax inspector, Taxpayer Relations Department, GDT
13	S.Gunjinlkham	Tax inspector, Taxpayer Relations Department, GDT
14	D.Batjargal	Senior tax inspector, Tax Audit and Methodology Division, SBRAD
15	S.Tugsjargal	Senior tax inspector, Mining and International Taxation Division, SBRAD
16	Ts.Delgermaa	Tax inspector, Mining and International Taxation Division, SBRAD
17	G.Byambasuren	Tax inspector, Mining and International Taxation Division, SBRAD
18	P.Otgonsuren	Tax inspector, Tax Audit and Methodology Division, SBRAD
19	N.Bolorchimeg	Tax inspector, Tax Audit and Methodology Division, SBRAD
20	N.Munkhdavaa	Tax inspector, Tax Audit and Methodology Division, SBRAD
21	N.Khandkhuu	Tax inspector, Tax Audit and Methodology Division, SBRAD
22	Ts.Ishjamts	Tax inspector, Tax Audit and Methodology Division, SBRAD

23	B.Tugsjargal	Tax inspector, Tax Audit and Methodology Division, SBRAD
24	Sh.Enkhjargal	Tax inspector, Tax Audit and Methodology Division, SBRAD
25	Yo.Munkhbat	Tax inspector, Taxpayer Relation Division, SBRAD
26	Sh.Batzaya	Tax inspector, Taxpayer Relation Division, SBRAD
27	B.Urantsetseg	Tax inspector, Risk and Statistics Division, SBRAD
28	G.Banzragch	Tax inspector, Tax Revenue Division, SBRAD
29	Kh.Altankhuu	Tax inspector, Administration Division, SBRAD
30	O.Tsend-Ayush	Tax inspector, Tax Audit and Methodology Division, Capital City Tax Office
31	J.Erdeneburen	Tax inspector, Administration Division, Capital City Tax Office
32	B.Bat-Erdene	Tax inspector, Chingeltei District Tax Office
33	Ch.Lkhamragchaa	Tax inspector, Chingeltei District Tax Office
34	D.Solongo	Tax inspector, Sukhbaatar District Tax Office
35	Ts.Undarmaa	Tax inspector, Songinokhairkhan District Tax Office
36	B.Ochirkhuyag	Tax inspector, Khan-Uul District Tax Office
37	S.Naranbaatar	Tax inspector, Dornod Province Tax Office
38	Ts.Unurmunkh	Tax inspector, Orkhon Province Tax Office
39	S.Duubayar	Tax inspector, Umnugovi Province Tax Office
40	L.Munkhtuul	Tax inspector, Legal affairs division, GDT

Japan International Taxation Case

JICA EXPERT Kodera Toshinari 27 November 2017

Japanese basic International Taxation cases

1. Transfer pricing cases: Imabari Shipbuilding Incident, Thai Baht Lending Interest Rate Incident, Adobe Incident, Honda Incident

2. PE case: (Reference) Amazon case II

3. Tax haven case: Glaxo case (also related to PE), visitor processing case

4. Foreign tax credit case: Guernsey (also related to TH)

5. Foreign corporation case: Silver fine construction (royalties)

6. Non-resident case: Takefuji case

7. International Tax Avoidance Case: Movie Film Lease Case

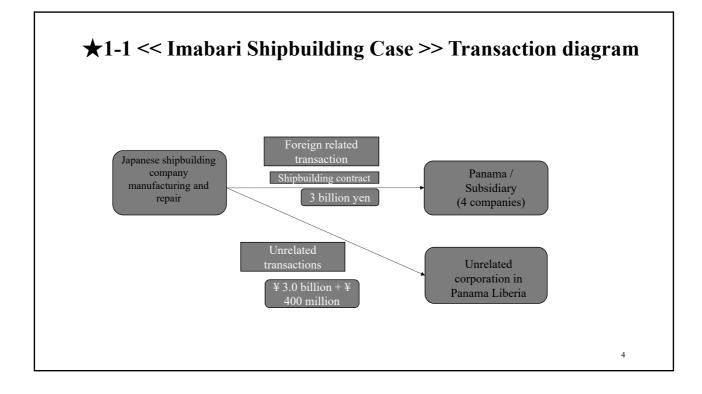
(Reference) US Apple Inc. tax avoidance case

8. Differences between Japan's international tax system and Mongolian legislation

9. GAAR (general tax avoidance)

2





★1-2 Summary of the case

A) The foreign-related transaction is a shipbuilding contract between a Japanese shipbuilding company and a subsidiary in Panama.

B) The tax office's comparable transactions are unrelated entities in Panama Liberia.

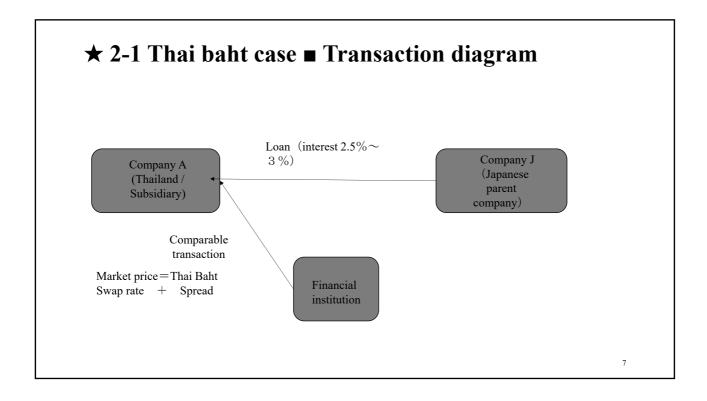
C) Tax Authority has adopted the CUP method as TPM. The taxpayers argued that the taxable income of 400 million yen was within the "range".

5

6

★1-3 Takamatsu Supreme Court Judgment

- The TPM (Transfer Pricing Method) of the Taxation Agency is a CUP stipulated by laws and regulations.
- In this case, "range (range)" of multiple comparable transactions cannot be adopted.
- Even if there are multiple comparable transactions, there is a clear difference in comparability, and if it is easy to narrow down the comparable transactions to one, the concept of "range" is not used and the high comparability transaction can be set as arm's length prices. Further, the "difference adjustment" only needs to have an objective effect on the price.
- There is no need for taxpayers to avoid taxation when applying transfer pricing taxation.



\star 2-2 Summary of the case

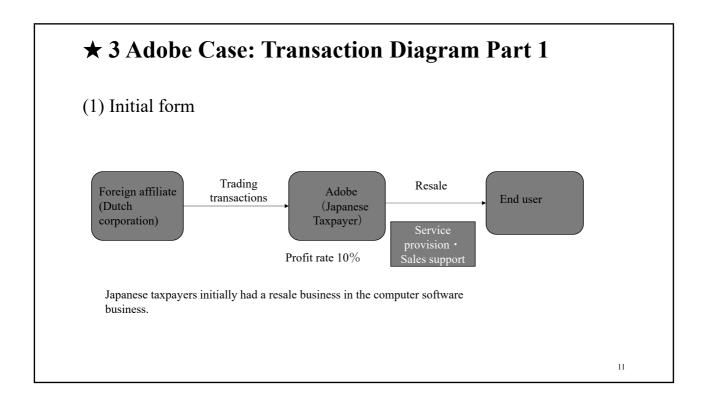
- A) The Foreign-related Transaction is a Thai baht transaction conducted by a Japanese operator with a subsidiary in Thailand.
- B) The Tax Authority has compared the hypothetical market price index (Thai baht swap rate + spread) with financing in the London financial market, rather than actual transactions with third parties.
- C) The Tax Agency has designated TPM as "a method equivalent to a method pursuant to the CUP law."

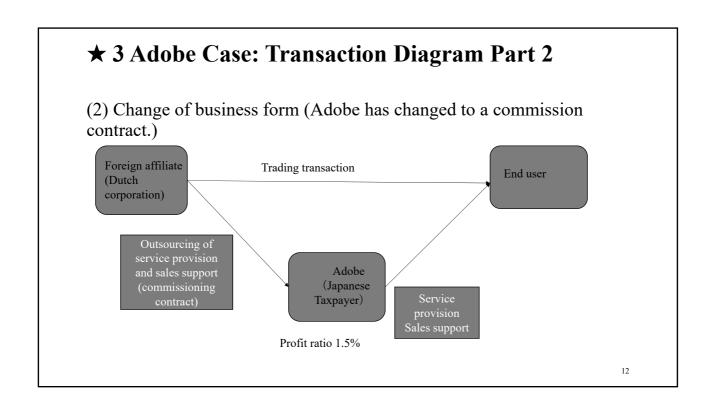
★2-3 Summary of the Tokyo District Court Judgment

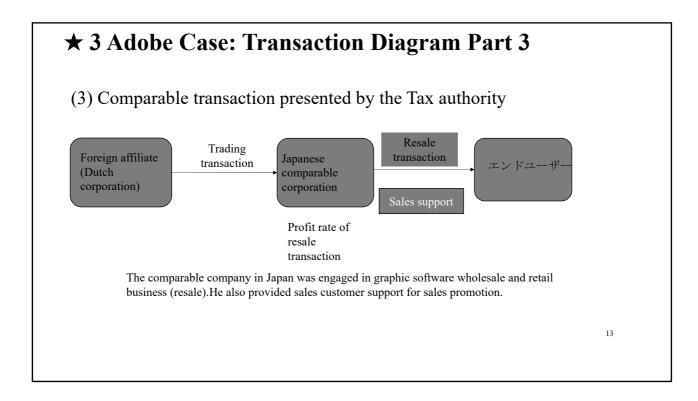
- The TPM used by the Tax Authority is a "method equivalent to the CUP law" stipulated by law.
- Even if the transaction is not a real transaction, if it can be assumed that the transaction can be compared with the foreign-related transaction by an objective and realistic indicator, it can be a target of comparison. (thus, the market price index is OK under certain conditions.) This ruling refers to the OECD TP guidelines.

★2-4. References

- What is the "method equivalent and complaint to the CUP method"?
- Compliant method: There is no definition in laws and regulations, but for example, it refers to a rational method that conforms to the transaction content and does not deviate from the three basic laws.
- Equivalent method: Refers to the TPM of transactions other than inventory, such as the provision of services.







\star 3-2 Summary of the case

A business outsourcing agreement has been signed between Dutch company B and Adobe (Japan) for providing support and other services. Under this agreement, a Dutch company paid Adobe 1.5% of sales and costs as a commission.

(A) The Tax Agent considers import sales transactions that take the order-to-sale method to be similar transactions to related transactions in that they do not bear inventory risk, treats them as comparable transactions, and uses TPM equivalent to the method based on the Resale Price Standard Method.

(B) Taxpayer Adobe argued that the foreign tax-related transaction is a service providing transaction, but the taxable office's comparable transaction is a resale transaction, and the TPM selected by the taxation office is incorrect because of the difference in functions.

★3-3. Summary of the Tokyo Supreme Court Judgment

• The TPM of the Tax Administration is not a legally equivalent method that is based on laws and regulations, because foreign-related transactions and comparable transactions have decisive functions and risks for the following reasons.

"Reason"

- Functional aspects: While the Foreign-related Transaction is a service-related transaction that provides services such as support, both legally and economically, the core of the comparative transaction is a resale transaction. Because there is customer support for sales promotion, there is a difference.
- Risk aspect: The foreign-related transaction will be paid to cover all necessary expenses, while the comparable transaction will incur losses if it falls below the break-even point, even if it uses a sales-to-order method. Therefore, there is a difference in the risk of loss occurrence.
- Thus, the Tokyo Supreme Court ruling on service transactions or resale transactions regarding the similarity of functions and risks? It emphasizes the difference in the legal form.

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 \star 3-4. References (Characteristics of the first instance: A more detailed factual analysis is conducted.)

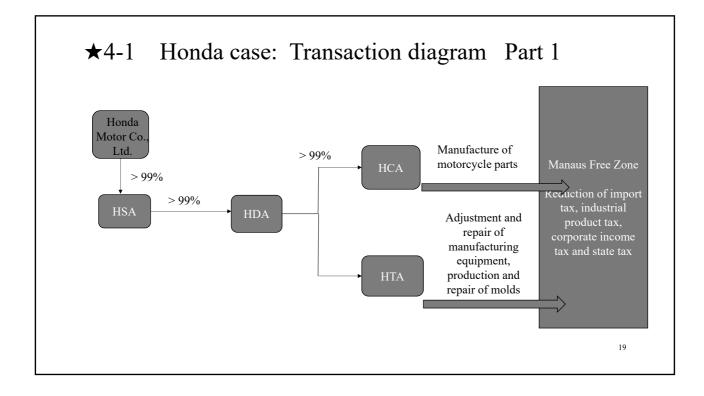
• First instance (Tokyo District Court): There are similarities between the comparable company and the verified company in both functions and risks. This is because, in terms of function, the verification target is sales promotion, marketing, advertising, and support services, while the comparison target also performs sales promotion, support, and advertising, and in terms of risk, the verification target is inventory risk. And there is no risk of debt collection from customers, whereas the comparable company (even though it is a resale transaction: Kodera Note) has almost no inventory risk since it is a sales-to-order transaction, and the seller is a large company. Because there is little risk of bad debt.

★3-5. Criticism of the Tokyo Supreme Court ruling

- Too much emphasis on legal differences (service provision or resale?) makes it generally difficult for taxpayers to select comparable transactions based on a prototype-based decision.(Taxpayers may try to find comparability in fact analysis, as in the Tokyo District Court, despite differences in legal form.)
- This will encourage the use of the PS method (RPSM) rather than the three basic methods (CUP.RP.CP) that presuppose comparable transactions.

★3-6. ALP calculation by business restructuring

• As in this case, the Japanese corporation initially made a profit from resale transactions, but if it becomes a service provision transaction due to business restructuring, the service fee for providing services is deducted from the revenue related to purchasing and sales in the resale transaction. The profits will be reduced by the amount of profits, and compensation will be a problem (OECD TP Guideline Chapter 9).



★4-1 Honda case: Transaction diagram Part 2

- Foreign-related transactions
- (1) Motorcycle sales
- (2) Parts sales
- (3) Sales of manufacturing equipment, etc.
- (4) Provision of technical support services

★4-1 Honda case: Transaction diagram Part 3

Tax calculation by comparable transactions presented by tax authorities

- (1) Comparative company: 8 Eight companies selected from Brazilian companies that manufacture motorcycles and four-wheeled vehicles and related products (company not located in Manaus Free Zone)
- (2) Basic benefits such as HAD Adjust the interest burden on accounts receivable, inventories and accounts payable, and calculate from the median gross operating income ratio

 \circ Japanese split factors (development costs for Brazil, technical guidance fees, etc.)

• Brazilian split factors (dealer development costs, advertising costs, etc.)

★4-2 Summary of the case

- A) Domestic corporations whose main business is the manufacture and sale of motorcycles are their descendants, and foreign corporations such as HAD, which manufactures and sells motorcycles in the Brazilian free trade zone (Manaus Free Zone) and parts sales transactions and service provision transactions.
- B) Taxation measures:
- Incremental corporate tax amount of about 25.4 billion yen, additional corporate tax amount of about 7.5 billion yen
- The tax authorities have calculated the ALP using the PPSM (residual profit split method). Eight companies to be compared in Brazil were selected, adjusted for differences to calculate basic profits, and further divided residual profits based on the expenses spent to calculate ALP and conducted tax measures.

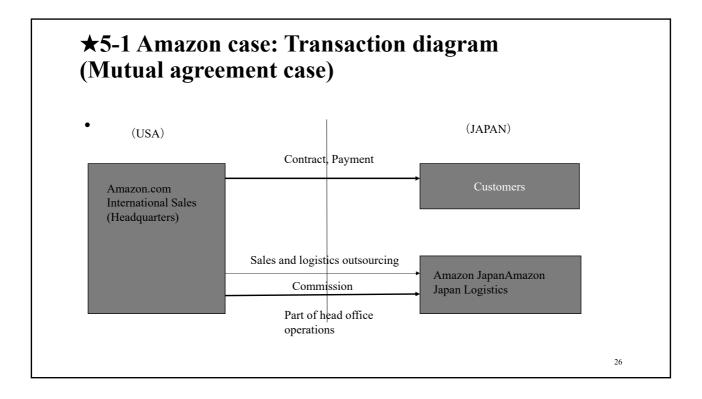
★4-3 Tokyo District Court (Taxpayer Win)

- On May 28, 2015, the Tokyo High Court dismissed an appeal in a lawsuit seeking a reversal of the state in response to Honda's additional tax levied on transferring profits overseas in a transaction with a Brazilian subsidiary. The country side did not appeal and Honda won.
- Honda's request has been fully accepted and the rulings of the first and second trials have decided to cancel the taxation of about 7.5 billion yen. The deal was with Honda, an indirect subsidiary that manufactures and sells motorcycles in the Manaus Free Zone in Brazil (a free trade zone where import taxes are reduced and tax benefits are enjoyed). There has been a dispute over whether the arm's length price calculated by the government is illegal or not. The point at issue is whether or not the comparable corporation selected by the government is appropriate. The court of second instance and the Tokyo Supreme Court pointed out that the tax incentives received by the local indirect subsidiary for the judgment reasons had a significant effect on the profit margin of the subsidiary, and as in the first instance judgment, the tax incentive was not received in the country He concluded that the country's method of calculating taxable profits compared to similar companies was incorrect. → In other words, compared to similar companies that receive tax incentives, the profit margin is naturally higher, and there may be no problem.

★4-4 References (Comparability)

- OECD TP Guideline 1.55, 1.73
- Market similarity between the comparable company and the verification targeted company is required
- If the business activities of the verification target company are subject to government regulations / interventions, it is necessary for the comparison target companies to select a company subject to the same government regulations / interventions.
- The Manaus Free Zone is a tax-benefit-profit market, as corporations benefit from the resulting operating profit (59% of operating profit comes from tax incentives). Therefore, it is wrong to use Manaus Free Zone Company as a comparable company, and if you use it, you have to adjust the difference (reduce operating profit) (no difference adjustment)

2 PE cases



★5-2 Summary of the case (PE case)

PE case: Amazon case (Tokyo Tax office taxation and mutual agreement case) International transactions in question :

• The US parent company of Amazon (Amazon.com International Sales, Inc.) has no branch office in Japan and has entered into a sales contract directly with a Japanese customer and recorded sales in the United States. Meanwhile, sales and logistics operations were commissioned and paid to Amazon Japan and Amazon Japan Logistics in Japan. (A kind of commission nearer (wholesale scheme))

Taxation of the Tokyo National Tax Office:

The Tokyo Tax Office has determined that these Japanese corporations perform the PE function of their U.S. parent company, and Sales Income from sales to Japanese customers, as business income in Japan. (2009: additional tax of about 14 billion yen)

Amazon Response: Dissatisfied with taxation and applied for mutual agreement based on the US-Japan Tax Treaty.

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\star 5-3 Fact recognition by the Tokyo National Tax Office

Fact recognition:

- Amazon Japan Logistics had a distribution center in Chiba Prefecture and had purchased books. If it is a mere warehouse, it is not a PE, but the NTA has confirmed the following facts.
- (1) PCs and equipment from affiliated companies are brought in and used.
- (2) Permission from the US parent company is required for relocation within the distribution center.
- (3) Amazon.com International Sales of the United States instructs Logistics employees by e-mail.
- (4) Logistics was responsible for some of the US operations that were not outsourced to the US, other than logistics operations.

★5-4 References

Q: What is commissioner trading? In wholesale trade, legally, the parties to the rights and obligations are parties to the sale. However, economically, the wholesalers themselves get the commission by assigning the economic effect to the third party who is the client.

In the first place, wholesalers are not profitable because they do not take the risk of inventory and credit risk of accounts receivable when goods are left unsold, but they can secure a minimum commission and the income subject to corporate tax is inherently small.

★5-5 Legal analysis

Legal analysis:

Q1: Even if you tax on PE, which PE did you tax on?

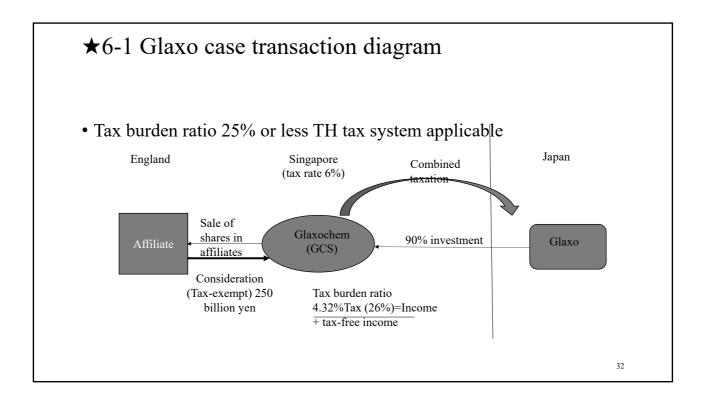
Q2: Is this a first number PE? The "Business Management Place" and "Office" of the US headquarters in a Japanese distribution center (Article 5 (1) of the US-Japan Tax Treaty)

According to Japanese corporate tax law, one room in a hotel where business activities are based is the first PE as a fixed place of business.

Q3: Is an agent PE? Independent agent PE?

Even if the wholesaler is a subsidiary of the foreign company of the client, if it is an independent agent and sells the customer's products as a normal business, the foreign parent company, it will not be an agent PE (No.3 PE) (Article 5, paragraph 5 of the US-Japan Tax Treaty).

3. Tax haven case



★6-2 Summary of the case Part 1

- The company to be verified is a 90% owned company of Singapore subsidiary GCS (manufacture and sale of gastric ulcer drugs).GCS sold the business to an affiliate and recorded a gain on sale.
- At that time (1998), gains on the sale of shares were tax-exempt, so the tax burden rate was only 4.32%. As a result, the Tax Agent has applied the TH tax system (CFC tax system) as a specified foreign subsidiary, since the tax burden at the time under the TH tax system was 25% or less.

★6-2 Summary of the case Part 2

• Verification target corporation claim:

- 1) The CFC tax system embodies the principle of real income tax (Article 11), which stipulates that the retained earnings of a foreign subsidiary belong to the parent company.
- 2) Retained income of foreign subsidiaries corresponds to business income.
- 3) Article 7 (1) of the Japan-Singapore Tax Treaty stipulates the principle of "no tax if there is no PE", and business income of a Singapore corporation cannot be taxed unless the corporation has PE in Japan.
- 4) Under the Constitution of Japan, the treaty takes precedence over the law, so this measurement under the CFC tax system will tax the business income of the Singaporean corporation even though the Singaporean corporation has no PE in Japan. However, this is not permissible as a violation of Article 7 (1) of the Japan-Singapore Treaty.

★6-2 Summary of the case Part 3

- Tax office claim:
- 1) The principle and purpose of the CFC tax system and the principle of real income tax are different.
- 2) Because the former is a tax avoidance denial system in which the income of a foreign corporation established in a lightly taxable country is regarded as the income of a domestic corporation, whereas the latter is a system in which the form and substance are different. Because it is a rule about attribution of income.
- 3) The CFC tax system does not violate Article 7 (1) of the Japan-Singapore Tax Treaty, as it applies tax to the parent company located in Japan.

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★6-2 Summary of the case Part 4

- Commentary on Article 7 (1) of the OECD Model Convention
- 1) The commentary stipulates that the CFC tax system does not violate the provisions of the Model Treaty.
- 2) However, since Singapore was not a member of the OECD, it was disputed in this case whether this commentary could be referred to in interpreting the Japan-Singapore tax treaty.

★6-3 Initial trial and second trials (loss of taxpayer)

• Reject the request of the verification target corporation

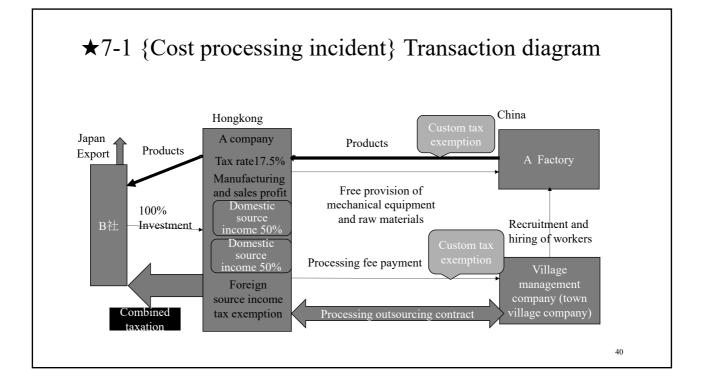
★6-4. Supreme Court decision (taxpayer lost)

• Dismissal of appeal:

- 1) Article 7 (1) of the Japan-Singapore Treaty reaffirms the principle established under international tax law that "There is no tax without PE".
- 2) The Japan-Singapore tax treaty prohibits in this case the exercise of the tax right that results in a double legal tax on the Singapore corporation of the Japanese taxation authority.
- 3) Japan's CFC tax system is limited to Japanese domestic corporations. Tax is not subject to the ban of the treat.

★6-5 Reference: Schneider case (France) Judgment on June 28, 2002

• The fact that the French Taxation Agency has levied on the income earned by the Swiss subsidiary of the French corporation (Schneider) to its parent company Schneider under the CFC tax system (Article 209B of the General Tax Code) means that France and Switzerland The taxation is illegal because it violates the business income provision (Article 7, paragraph (1)) provided in the tax treaty between the two countries.



★7-2 Summary of the case

- Tax-haven tax controversy regarding the foreign trade processing between a Japanese company in Hong Kong, a Japanese company handling optical lenses and optical equipment, and a Chinese company in China.
- Tax haven contention for tax exclusion conditions was disputed. Specifically, if a local subsidiary in Hong Kong falls under the wholesale business, the possibility of meeting the non-related party standards (the percentage of transactions with unrelated parties exceeding 50%) is considered. On the other hand, if it falls into the manufacturing industry, the possibility of meeting the manufacturer's standards (the main business depending on the location of the head office) is examined

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★7-3 Tokyo District Court decision (taxpayer lost)

• The Tokyo District Court determines that the main business should be comprehensively and individually and concretely based on objective observations based on the specific facts of the actual business situation.

It should not be done in a general and abstract manner based solely on the description, and determined that the business type of the relevant local subsidiary was manufacturing.

★7-4 Tokyo Supreme Court Trial (Taxpayer Loss)

- According to the Tokyo Supreme Court, "The decision on what the main business of a particular foreign subsidiary is based on social wisdom, from the perspective of the actual substance and the actual economic activities of the business. It should be done individually and concretely taking into account comprehensively."The judgment of the Tokyo District Court is appropriate.
- The country determined that it was a manufacturing industry. The company did not exempt from TH tax because it did not manufacture at the head office location. Therefore, tax was imposed.

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★7-5 Exemption requirements in Japan's Tax Haven (TH) measures tax system Part 1

- In Japan's TH countermeasures tax system, tax avoidance is formally determined and subject to combined taxation.
- However, such formal judgments are also applicable to cases where there is economic rationale for TH subsidiaries and the like to actually conduct business at TH. Therefore, in certain cases, such as when a TH subsidiary or the like conducts business in TH, there is a provision to exclude the application of this TH measures tax system.

★7-5 Exemption requirements in Japan's Tax Haven (TH) measures tax system Part 2

- Special Taxation Measures Law Article 66-6③
- Does TH have a business entity?
- Is the transaction economically rational?

Judgment is based on the criteria. This means that to meet the exclusion criteria, it must meet all of the following:

- (1) business standards,
- (2) substantive standards, and
- (3) management and control standards; However, if there is property income (interest, dividend, etc.), it is subject to combined taxation.

★7-5 Exemption requirements in Japan's Tax Haven (TH) measures tax system Part 3

• Special Taxation Measures Law, Article 66-6④ (property income)

Q: Why is property-based income (interest, dividend, income from provision of industrial property, etc.) subject to combined taxation?

A: Since we can easily change the source of income from asset-based income, it is easy to transfer income to other countries, and the fact that such asset-based income has arisen at TH subsidiaries, itself leads to tax avoidance. It comes from the idea that it is easy.

★7-5 Exemption requirements in Japan's Tax Haven (TH) measures tax system Part 4

• Understand the standards of Article 66-6③ of the Special Tax Measures Law!

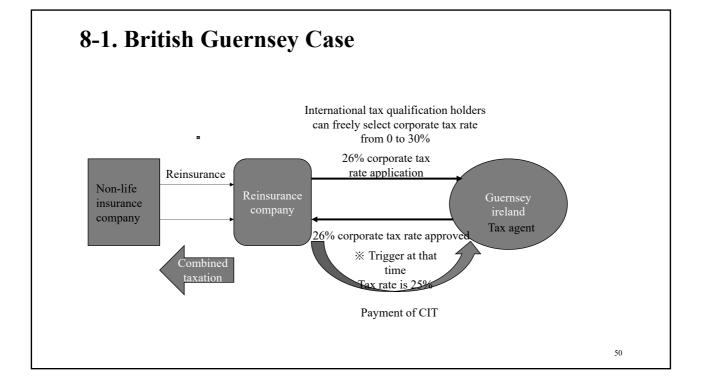
- (1) Business standards: If you own shares, you can conduct business anywhere, and there is no necessity to do so at a TH subsidiary. → Do not meet the business standards.
- (2) Substantive standards &
- (3) Management and control standards: If there are no fixed assets and management control required for the business, there is no entity of the company. All of the above must be satisfied from (1) to (3).(4)
- (4) Location country standards (manufacturing): The main business is not conducted in the country where the head office is located. → Does not meet the location country standards.
- (5) Non-related party standards (eg, wholesale trade): Since wholesale activities must be international, if more than 50% of business partners, it is ok to be economically reasonable, but transactions with unrelated parties that are not more than 50% are not international wholesalers and have no economic rationality. Either (4) or (5) must meet either.

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★7-6 Tokyo Supreme Court August 10, 2011 (Summary: Detailed fact finding regarding the application of the country standards of the country in which the country is located)

- (1) A was established for the purpose of manufacturing and selling products at B headquarters and the α factory, and was registered in the commercial registry as a manufacturing business.
- (2) A was performing production control at the α factory.
- (3) A manages the personnel of α factory.
- (4) A had been conducting capital expenditures, finance, and personnel management by integrating the B headquarters and the α factory.
- (5) A declares wholesale business in Hong Kong and manufacture in mainland China,
- (6) even in the processing contract between A and the village management company, it is recognized that A was actually producing products for sale at the α factory.
- (7) Accordingly, the main business of A is manufacturing products at the α factory.
- (8) However, the α factory is not located in Hong Kong where A's head office is located.
- (9) Therefore, the country standards for manufacturing industries are not met. → Combined taxation.





★8-2 Summary of the case (Tax payer reversal victory suit)

- In a trial, on December 3, 2009, which was decided whether "taxes" that can set tax rates freely would fall under "foreign corporate taxes" under Japanese corporate tax law, the Supreme Court acknowledged the claim of the non-life insurance company, a taxpayer and appellant, and sentenced the taxpayer to a reversal victory.
- In Guernsey of UK subsidiary that is a wholly owned by non-life insurance company, tax rates are determined by agreement between taxpayers and tax authorities in the range of "more than 0% to 30%". The subsidiary had a tax rate of 26%, exceeding "less than 25%", which would qualify as a certain foreign subsidiary subject to tax haven taxation.
- On the other hand, the taxing authority considers that one of the relevant requirements of a specified foreign subsidiary is that a foreign relation having a head office or principal office in a country or region where "tax does not exist" imposed on corporate income "Tax" on Guernsey is a "foreign corporation tax" referred to in Article 66-6, Paragraph 1 of the Special Taxation Measures Law Therefore, the subsidiary is judged to be a specified foreign subsidiary. Tax authority denied the application of foreign tax credits, as it was not a foreign corporation tax.

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★8-3 Supreme Court decision

- The Supreme Court stated, "In practice, a tax that would allow a taxpayer to arbitrarily relieve the tax burden would not be a tax equivalent to a corporate tax, can be understood as not being included in foreign tax deduction".
- On the other hand, ultimately, the "tax" of Guernsey is "a tax imposed on the income of the Subsidiary by Guernsey based on Guernsey's laws and regulations. In addition, it is not a tax prescribed in Article 141, Paragraph 3, Item 1 or 2 of the Enforcement Order of the Corporation Tax Act, which is considered to be excluded from foreign corporation tax, or a tax similar to these. It is also difficult to deny that it falls under foreign corporate tax. "And the taxpayer has ruled in reversal victory suit.

\star 8-4 Legislation: Definition of foreign corporate tax

Q: What is "Foreign Corporate Tax" in Article 69, Paragraph (Foreign Tax Credit) of the Corporate Tax Law?

A: Corporate Tax Law Enforcement Ordinance, Article 141, Paragraph (Definition of Foreign Corporate Tax) ¬Formal Definition

Corporate income tax based on foreign laws Article 141 of the Corporate Tax Law Enforcement Order (included in foreign corporate tax) \neg substantial

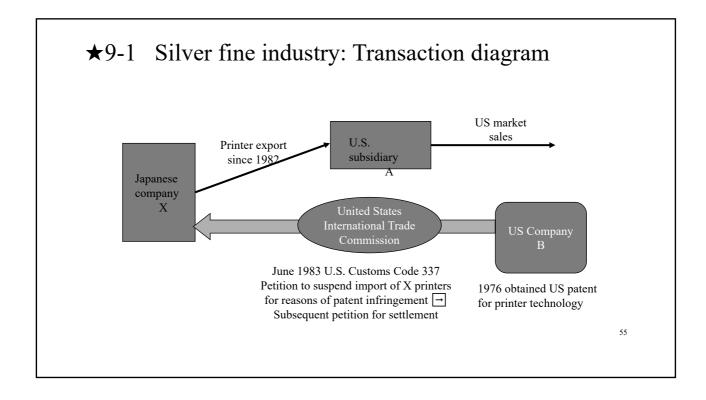
(1)Excess profit tax, (2)additional tax, (3)income tax

Definition:

Article 141, Paragraph 3 of the Corporation Tax Act Enforcement Order (Not included in foreign corporation tax) realistic (1) Arbitrary refundable tax, (2) Arbitrary payment grace period determinable taxes, The Supreme Court has ruled that this does not apply to paragraph (3).

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5 Foreign corporation case



\star 9-2 Summary of the case (Settlement negotiations and taxation)

Settlement agreement between Japanese corporation X and US corporation B (concluded in November 1983)

- 1) X pays B a royalty or other payment (approximately \$ 760,000) for B's infringing product already sold in the United States.2)
- 2) B makes no claim on the condition of this royalty payment.
- 3) In addition, this payment amount is a consideration for possible dispute settlement between X and B in the future.

 \rightarrow X has paid B a total of \$ 760,000 under this Agreement without withholding tax.

 \rightarrow The chief of the tax office deemed that this payment corresponds to domestic source income under Article 161-7 (a) of the Income Tax Law and imposed withholding tax.

★9-3 Judgment (The first and second trials and the Supreme Court have both lost the country.)

• Supreme Court

- 1) The Payment is the royalty in the United States of America for the sale of the Device in the United States.
- 2) Therefore, it was not paid for X's business in Japan.
- 3) In this case, the amount paid is not a royalty equivalent to domestic source income under Article 161-7 (a) of the Income Tax Law.

Reason The amount is for X and others to have a non-exclusive, limited license to sell the printer in the United States under B's U.S. patent, and the U.S. and It is a royalty for the right.

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★9-4 Opposition of two Supreme Court judges

The payment amount is a royalty fee for licensing the technology, that constitutes the United States patent rights for X manufacturing and selling printers in Japan.

 \downarrow

Domestic source income.

★9-5 Reference Mitchell case (Showa 60)

Case

The domestic corporation manufactures products in Japan under the exclusive license of U.S. patents and know-how in multiple countries including Japan from foreign corporations, and exports some of the products to foreign countries through Japanese subsidiaries of the domestic corporations.

Issue

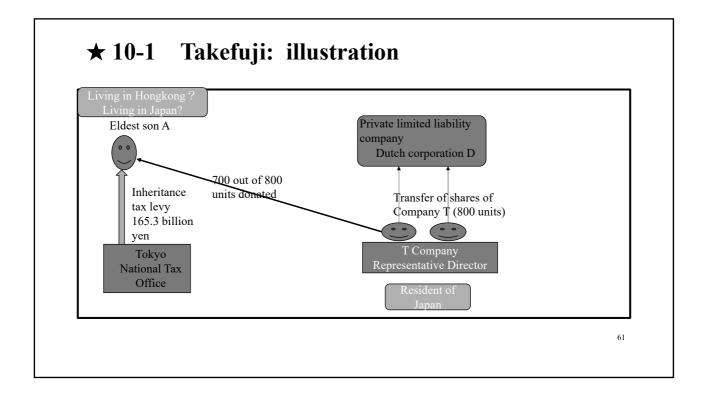
Where is the source of the usage fee?

Tokyo District Court

Even if some of the products manufactured in Japan were eventually sold abroad, in this case the royalties were paid for use in the manufacturing phase, which is the fundamental use of the patent, the entire amount is assumed to be from Japan. However, the US-Japan Treaty currently has a tax exemption provision.

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6 Non-resident cases



★10-2 Summary of the case

- Former chairman of Consumer Finance Takefuji and his wife donated shares of a Dutch company to their eldest son in 1999 before the law on inheritance and gift taxes was revised in 2000. At this time, the eldest son was a board member of Takefuji and a subsidiary in Hong Kong, and was traveling back and forth between Japan and Hong Kong for a meeting.
- According to records, between 1997 and 2000, approximately two-thirds lived and lived in Hong Kong. In fact, he was also
 working for a Hong Kong subsidiary and the donated Dutch company owned the shares of Takefuji, and also owned
 domestic assets in Japan. Should inheritance occur, inheritance tax would be imposed not only on domestic property but
 also on property outside of Japan. In other words, if the eldest son inherited the shares, a large inheritance tax was imposed.
- However, in the case of Takefuji, his eldest son was outside the country, and "living" in Japan became a problem. In addition, if the donated property is also foreign property, the law stipulates that the eldest son is not subject to gift tax, so he gave away tax-free shares of Dutch companies. Of course, there is no declaration of gifts in Japan.
- After that, as the amount of the gift was large, the tax authorities investigated it. In 2005, this gift was made as a tax avoidance act, and it deemed unacceptable for tax purposes, and additional tax of about 133 billion yen was taxed. Because it was a gift tax, it reached 70% of the highest tax rate at that time. The gift tax was revised in 2001, and the maximum tax rate was reduced from 70% to 50%. Supreme Court Decision-The Supreme Court concluded that the gift to the eldest son was not considered tax evasion, and canceled the tax levy. The Court ordered the tax authorities to refund 133 billion yen and pay 40 billion yen as interest to the eldest son from the country.

★10-3 Issues of Judgment

- Q: The place where the eldest lived in Japan, is his address in Japan or Hong Kong?
- Since his eldest son lived in Hong Kong more than 65% for about three and a half years before and after receiving the gift, where is his true address? was a problem.

First Trial: Tokyo District Court decision in May 2007: Taxpayer won Second trials-Tokyo High Court ruling in January 2008: National side won.

Supreme Court Decision in February 2011: Taxpayer won.

★10-4 Tokyo District Court Judgment (Taxpayer won)

• "It is quite understandable that an address refers to the home of each person's life. is there."

rightarrow Even though the first trial is aimed at avoiding the gift tax burden, the fact that Hong Kong was the home of living will not disappear. Therefore, he concluded that the "home of life" was in Hong Kong and canceled the tax in full.

★10-5 Tokyo Supreme Court Judgment (National Winning Case) Part 1

- The second court considered that the eldest son's motive for staying in Hong Kong was to consider a gift tax avoidance plan and said that even if more than 65% lived in Hong Kong for three and a half years before and after receiving the gift, he should not judge the "home of living" based solely on the length of his stay. Therefore, (a) place of living, (b) occupational activity, (c) place of property, and (d) intention of residence were determined as follows.
- Former chairman of Takefuji has had numerous meetings with lawyers, and over the years, has created this gift scheme and has moved his eldest son to Hong Kong.
- In addition, his eldest son had a home in Japan, where he kept his household items and did not move it to Hong Kong. Living in Hong Kong, was working for Takefuji using the internet and telephone.
- Therefore, it was recognized that "the home of life was in Japan." The gift was made for tax avoidance purposes only, and the tax authorities made the taxation of the tax authorities legal, stating that the length of stay in Hong Kong had been adjusted to be tax-free.

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★10-5 Tokyo Supreme Court Judgment (National Winning Case) Part 2

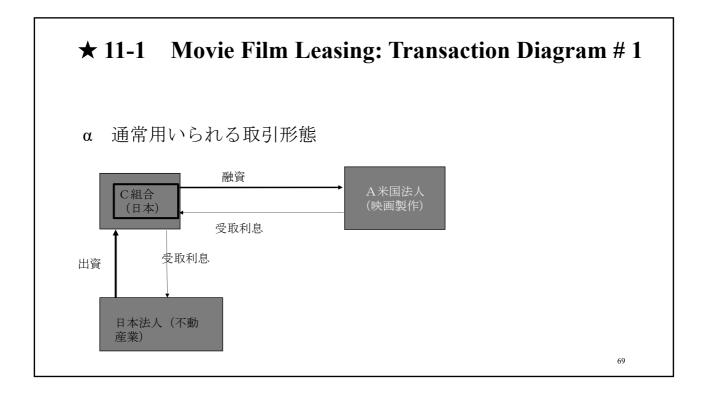
- (1) The home in Japan was maintained in the state before departure even after departure from Hong Kong and could be used as it was.
- (2) When living in Japan, the actual situation of living at home must be the same as before living in Hong Kong.
- (3) Being an executive of a Japanese company while in Hong Kong, fulfilling his duties and being promoted.
- (4) It is planned to take over the management of companies in Japan, and Japan was the most important base for vocational activities.
- (5) When staying in Hong Kong, he had not moved any household goods and had carried only clothes.
- (6) The value of the assets held in Hong Kong at the time of the gift should be less than 0.1% of the assets held in Japan.
- (7) The fact that Hong Kong's willingness to live was strongly discouraged.

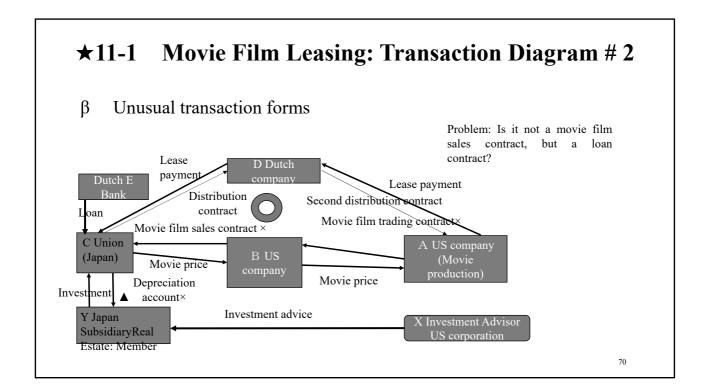
★10-6 Supreme Court ruling (taxpayer won)

• "Whether or not a certain place corresponds to an address should be objectively determined by having the entity that is the basis of life, and even if there is a subjective intention to avoid gift tax, because the entity does not disappear, under the above facts, the entity whose life is based in Hong Kong is based on the fact that the length of stay in Hong Kong is about two thirds of the period (almost 2.5 times the number of days spent in the country) cannot be used as a reason to deny that there is an entity that lives in Hong Kong based on the above facts.

•At present, no tax is imposed if the gifting person or the gifted person resides for more than 5 years and gifts foreign property.

7 International tax avoidance case





★11-2 Summary of the case Part 1

Points of contract by US corporate X investment advisor

- (1) Recruit Japanese investors and form a civil union C (investors are union members)
- (2) The C union has concluded a movie sales contract for a movie purchase from a U.S. corporation based on the union's own funds and borrowings from the Dutch bank E. U.S.A. enters into a similar movie purchase agreement with U.S.A.
- (3) In addition, C-Community has concluded a movie distribution agreement with a Dutch company in the form of a lease in the form of a lease. D-Dutch company enters into a second movie distribution agreement with the original movie film owner, U.S.A, under a lease agreement to grant movie distribution rights.

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★11-2 Summary of the case Part 2

Points of the flow of funds based on the contract

- (1) The union C paid a total of about 9 billion yen to the U.S. corporation as a movie purchase price, including about 2.6 billion yen of union members' own funds and about 6.4 billion yen of E-bank borrowings.
- (2) U.S. corporation B paid the same amount of 9 billion yen to U.S. corporation A for movie purchases.
- (3) The U.S.A. company paid 6.4 billion yen to the D dutch company as a second distribution agreement lease payment (the amount equivalent to the borrowing from C-Bank E).
- (4) D company paid to the C union 6.4 billion yen.
- (5) Furthermore, about 6.4 billion yen of funds returned to union C is equal to the borrowed money from Bank E. If you repay the borrowed money, C union's cash on hand will be zero.
- (6) In the end, C union is spending 2.6 billion yen of its own funds on US company A, a filmmaker.

★11-2 Summary of the case Part 3

Circular finance issues

Funds are circulating with C union \rightarrow B, US company \rightarrow A, US company \rightarrow D-Dutch Co., Ltd. \rightarrow C union. (circle reverse to ownership)

Circular financing is a technique that appears to be a taxable commodity that simply circulates funds between the parties, in appearance, as if it were a genuine payment.

★11-3 Taxpayers (Y union members / corporations) accounting / claiming and countermeasure by the Taxation Agency

Taxpayers (Y union members / corporations) accounting / claiming

- (1) The Y union member capitalized a movie film related to selfinvestment with equipment and equipment (useful life: 2 years), and deducted depreciation expenses. The film was subsequently distributed by lease to D-Netherlands.
- (2) The Y union asserted that this project had taken the ownership of the movie film and then engaged in the leasing business.

Countermeasure by the Taxation Agency

In effect, union C did not purchase movie film, but instead provided a loan to A, U.S company for film distribution.

★11-4 Osaka District Court decision (taxpayer lost)

Adoption of the logic of private law composition

"Summarizing the points (observing the whole contract as a whole), the transaction is in effect a Y corporation financing an A, US corporation through a C union."

C unions and Y corporations have not truly acquired ownership of movie films. Denial of all depreciation expenses of Y corporation.

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★11-5 Osaka Supreme Court decision (taxpayer lost)

Adopting private law composition

(1) Tax is based on economic transactions subject to private law

(2) The intention of the parties under the private law, which is the premise of the taxation, should be determined in accordance with the substantial agreement that takes into account the economic situation.

(3) Even if there is no principle of denial of tax evasion, if there is a purpose of tax evasion, apply the tax requirements by forming a legal structure based on the facts of the private law that the parties really intend.

(4) Then, the real intention under the private law of the contracting of the corporation A company is to raise funds while retaining the right to dispose of the core part of the movie, and to avoid tax in the union C.

(5) Therefore, Y Corporation has not acquired ownership of movie films. Depreciation of movie film is denied in full.

★11-6 Supreme Court Justice (Taxpayer lost)

The Supreme Court did not use factual findings in lower courts (first and second) or "constitutional theory in private law." In addition, each contract has not been denied.

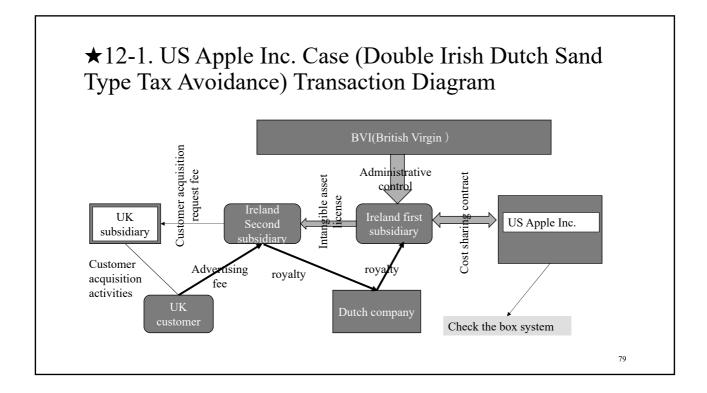
- 1. It cannot be said that the movie film is being used for the business of C union or Y Corporation. Therefore, it is not a depreciable asset under Article 31 (1) of the Corporation Tax Law (Article 13 (1) of the Enforcement Ordinance), so depreciation expenses cannot be recorded.
- 2. Even if C union has acquired rights such as ownership of a movie through a movie film sales contract with a B, US corporation, most of the rights were transferred to the movie distribution Dutch company under a lease agreement with the the company, which has lost substantial authority to dispose of the film, on the same date as the transfer of ownership. Moreover, since the Y corporation of the members who purchase movie films from such Y unions is a real estate business, it seems that they are not interested in investing in movie distribution.
- 3. In addition, C union repayment of the borrowing from Bank E is offset by the payment of lease payments from D Dutch corporation. Therefore, there is no risk of borrowing as a debtor.

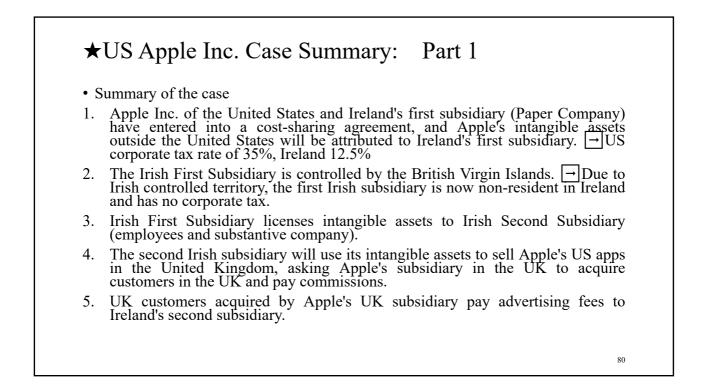
★11-7 Theory of Private Law

- Theory of Professor Nakazato of the University of Tokyo
- "Denial due to private law composition"

Regarding the taxation requirements, regardless of the appearance and format adopted by the parties, the tax is formed by applying the taxation requirements by constructing a law based on the facts of the private law that the parties will truly intend.

A method for denial of evasion in consideration of the transaction, if the provisions of Article 1 (3) of the Japanese Civil Code apply to the "abuse of rights" and Article 94 "misstatements" and the sales transaction between the U.S. corporation and the C union becomes invalid. Behind that, it approves the conclusion of the "financing contract". \neg However, unless the transaction becomes "invalid" under the Civil Code, the transaction cannot be changed.





★US Apple Inc. Case Summary: Part 2

6. The Irish Second Subsidiary pays royalties to Dutch companies funded by advertising fees from UK customers, and the Dutch companies pay royalties to Irish First Subsidiaries.
→ The withholding tax is exempted under the Irish-Netherlands Tax Treaty and the Dutch tax system, respectively.

7. The Irish Second Subsidiary will be subject to Irish corporate tax (12.5% tax) on the income of [Ad Revenue-Loyalty to Dutch Companies].

8. Apple Inc. has made Ireland 2nd Company a branch of Ireland's 1st subsidiary under the check the box system. Irish First Subsidiary has a branch of Ireland's Second Subsidiary, which has business status, and Ireland's First Subsidiary also has business status, and has been exempt from tax haven taxation in the United States.

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8. Japan's international tax system and Mongolian legislation

Japan's International Relations Tax Law (important basic provisions) M: Comparison with laws and regulations of Mongolia

- 1. Transfer pricing taxation (M: Some laws apply)
- 2. Permanent facility tax (M: No law)
- 3. Low capital tax system (M: with laws)
- 4. Excessive interest tax system (M: No law)
- 5. Tax haven measures (M: No law)
- 6. Corporate Inversion Tax (M: No law)
- 7. Foreign tax credit system (M: Some laws apply)
- 8. Non-profit system for dividends from foreign subsidiaries (M: No law)
- 9. Taxation of donations to foreign parties (M: No law)
- 10. Conversion of foreign currency transactions (M: No law)
- 11. Withholding tax for non-residents and foreign corporations (M: Some laws apply)
- 12. International consumption tax (M: No law)

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1. Basic rules of transfer pricing taxation (Article 66 {4} of the Measures Law) and legal system

(Special case of taxation on transactions with foreign parties)

In each business year, a corporation sells assets, purchases assets, and provides services with foreign-related parties pertaining to the corporation (a foreign corporation that has a special relationship with the corporation).

In cases where other transactions are conducted, for foreign-related transactions, when the consideration paid by the corporation from the foreign-related party is less than the arm's length price, or the amount paid by the corporation to the foreign-related party. If the price exceeds the arm's length price, the application of the provisions of the Corporation Tax Law and other laws and regulations related to the income of the relevant corporation in the relevant business year shall be deemed to have been made at the arm's length price.

Legal system Measures law \rightarrow Same enforcement order \rightarrow Same enforcement rule \rightarrow Same notice \rightarrow TP business operation guidelines & NTA casebook * Recently, a transfer pricing guidebook was published.

(Special case of taxation on transactions with foreign related parties)	
\rightarrow Article 66-4 of the Measures Law(1)	
(Price between arm's length companies: explanation of CUP, RP, CP)	
→ Article 66-4 of the Measures Law②	
(Price between independent companies: PS, RPSM, TNMM)	
→ Article 39-12 of the Measures Law Enforcement Order	
(Application to transactions with unrelated parties)	
\rightarrow Article 66-4 of the Measures Law ⁽⁵⁾	
(Correction or determination based on estimation of arm's length price)	
\rightarrow Article 66-4 of the Measures Law (8)	
(Attach statement to overseas affiliates)	
\rightarrow Article 66-4 of the Measures Law (19)	

2. Permanent Facility Tax (PE) Basic Provisions (Article 141 Private Tax Law) and Legal System

Article 141 of the Corporation Tax Law

The standard of taxation on corporate income for each business year imposed on foreign corporations shall be the amount of domestic source income specified in each of the following categories according to the classification of foreign corporations listed in the following items.

- (1) Foreign corporations with PE
- (2) Domestic source income listed below for each business year
- (A) Domestic source income listed in Article 138-1 (Domestic Source Income)
- (B) Domestic source income listed in Articles 138 through (6)
- (C) Foreign corporations without PE PE. Domestic source income listed in Articles 138. Law System Corporate Tax Law→Enforcement Ordinance→Enforcement Regulations→Notice and Measures Act→Notice

3 Fundamental Provisions of the Understated Capital Tax System (Article 66, Paragraph 5 of the Special Taxation Measures Law) and Legal System

• If the domestic corporation pays interest on debts to the foreign controlling shareholders, and the financers of the domestic corporation in each fiscal year, if the average liability balance of debts to the domestic corporation exceeds the amount equivalent to three times the equity interest of the foreign controlling shareholder of the domestic corporation in the current business year, the amount calculated in accordance with a Cabinet Order that corresponds to the excess of the interest of the debt paid to the financer and shareholders shall be calculated the amount of income of the domestic corporation for the relevant business year and not be included in the deductable amount.

Thin capitalization • Article 66-5 (1) of the Special Taxation Measures Law, continued

• However, that this shall not apply if the average debt balance of the domestic corporation for the total business year is less than or equal to three times the equity capital of the domestic corporation.

Important Provision 1 Definition of Foreign Shareholders, (Article 66-5 of the Measures Act, 13-13 of Measures 39)

- Non-resident or foreign corporation with the following relationship
- (1) A relationship in which a domestic corporation is controlled (50% or more of issued shares are held directly or indirectly).
- (2) Relationship between the two corporations when controlled by the same person
- (3) Relationships that can substantially determine all or part of the business policy of domestic corporations

Important Provision 2: Formula for calculating the deductible amount of interest expense (Article 66-5 of the Measures Act 13-13 of Measures 39)

Foreign controlling shareholders, Average equity balance related to foreign controlling shareholders, -Equity interests such as-x 3

Total interest expense × Average debt balance related to foreign controlling shareholders, etc.

Calculation example: Total interest expense \$ 200

Average debt of foreign controlling shareholders 100

International controlling equity $20{200 \times 40\% = 80}$ · · Not deductible as interest expense

4 Basic Provisions for the Excessive Interest Tax System (Article 66-5-2 of the Special Taxation Measures Law (Earning Stripping Rules))

(Loss not included in interest expenses related to related parties.)

• If there is an interest paid by related parties in each business year, the balance of the corporation after deducting the total amount of interest paid, subject to deduction for the relevant business year from the total amount of interest paid by related parties ("Amount of net interest paid by related parties") is determined by a Cabinet Order as the amount of adjusted income for the relevant business year of the corporation (the amount of interest paid by related parties, etc.) If the amount exceeds the amount equivalent to fifty-hundredths of the relevant corporation, the amount equivalent to the excess of the total amount of interest paid by related parties for the relevant business year for the relevant corporation shall be calculated the amount of income of the corporation is not included in the amount of deductible.

Important Provision 1 Definition of Related Persons (Article 66-5-2 Measures 39-13-2, 3)

Related parties

- (1) Those with a direct or indirect interest of 50% or more
- (2) Persons who have a real control / subject relationship
- (3) A third party who has received a debt guarantee from the person

Important Provision 2 ② Non-Deductible Amount (Article 66-5-2 ② Measures 39-13-2)

Related party net interest expense - Adjusted income amount x 50%

Related party net interest expense = Related party interest expense - Related party interest income

Adjusted income amount = Income amount before deduction of deferred expenses + Net interest expense of related parties + Depreciation + Depreciation expenses + Income not included in dividends received + Extraordinary losses such as bad debt losses

Related party interest payments: Excludes those who receive payments that are included in Japanese corporate tax and income taxable income

Important Provision 3 ① Carrying forward the non-deductible amount and deducting the excess interest amount (Measures Act 66-5-3-3)

Carry forward non-deductible amount and deduct excess interest amount

The non-deductible amount is carried forward for seven years and can be deducted in the fiscal year in which the amount of related party payments is less than 50% of the adjusted income amount.

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5. Tax Haven Basic Rules of Tax System (Total Tax System for Foreign Subsidiaries) (Article 66-6 of the Measures Law)

- Of the following foreign affiliates related to domestic corporations, the tax burden imposed on the income in the country or region where the head office or main office is located is the tax imposed on the income in Japan.
- If a foreign affiliated company specified by a Cabinet Order as being significantly lower than the burden (such as "specified foreign company, etc.") has an applicable income amount in each fiscal year, the applicable income by the government ordinance in consideration of the content of the right to claim the shares (meaning shares or contributions) of the specified foreign subsidiary owned by the domestic corporation as the amount corresponding to the number of shares of the amount.
- The amount corresponding to the amount calculated in accordance with (1) (referred to as "taxable amount") shall be regarded as the amount of profit of the domestic corporation and shall be included in the amount of profit of the domestic corporation.

Outline (Article 66-6 of the Measures Act)

• Regarding the income of a foreign company that satisfies the applicable requirements (applicable income amount), a system that considers the amount of equity of the domestic company as the income of the domestic company and includes the profit in the calculation of the income of the domestic company

Important Provision 1 (1) Application Requirements (Article 66-6 of the Measures Act, 14 of Measures 39-14)

1) The domestic corporation owns at least 10% of the shares of the foreign affiliated company located in Tax Haven.

ightarrow Of the retained earnings of the foreign affiliated company, the amount corresponding to the interest is included in the profit of the domestic corporation.

2) Tax haven foreign affiliation is a foreign corporation in which more than 50% of its issued shares or voting shares are directly or indirectly owned by residents and domestic corporations.

3) The head office is located in a country or region where tax on income is not imposed, or the tax on income of the corporation is less than 20% of income.

4) Foreign affiliates do not meet or do not meet the exemption requirements, but have asset-based income

Important Provision 2 ② Exemption criteria 1 (Article 66-6③ of the Measures Act)

If all of the following criteria are met, the application is excluded.

- (1) Business standards: Not mainly holding shares, offering rights, etc.
- (2) Substantive standards: The company has fixed facilities such as offices in the country where the head office is located.
- (3) Controlled area standards: The company manages, controls, and operates the business in the country where the head office is located.
- (4) One of the following criteria
- Country standards: Business is mainly conducted in the country where the head office is located.
- Non-related party criteria: Transactions with non-related parties are more than 50%.

Important Provision 3: Combined taxation of propertybased income (Measures Act 66-6)

- Even if the exemption criteria are satisfied, the following income (assets) will be subject to combined taxation according to the shareholding ratio, unless it is exempt from the combined taxation of asset-based income.
- (1) Income from dividends and transfers of stocks with less than 10% of the shareholding ratio
- (2) Bond interest, redemption margin, transfer income
- (3) Income from provision of patents and copyrights
- (4) Income from lending vessels and aircraft

6 Basic provision of corporate inversion measures tax system (Article 66-9-2 of the Special Taxation Measures Law)

Special provisions for taxation on income pertaining to a specified foreign corporation.(Includes profits such as taxable amounts for specific foreign corporations related to domestic corporations.)

Article 66-9 (1) Between the specially-related shareholder, and the specially-related domestic corporation, the specially-related shareholder must have at least 80% of the total amount or total number of issued shares or contributions of the specially-related domestic corporation. In cases where there is a relationship specified by a Cabinet Order as a relationship indirectly holding the number of shares or amount of shares, it shall be determined by a Cabinet Order that the intermediary between the Specially-Related Shareholders and the Specially-Related Domestic Corporation is through the holding of issued shares.

Among the prescribed foreign corporations (referred to as "foreign-related corporations"), the tax burden imposed on the income in the country or region where the head office or principal office is located is significantly lower than the tax burden imposed on the income of corporations in Japan (Hereinafter referred to as "Specific Foreign Corporation"), which has the applicable amount, the direct applicable portion of the applicable foreign corporation owned by the Domestic Corporation, which is the specially related shareholder, and the number of indirectly held shares, in consideration of the content of the right to claim such shares (meaning the right to claim dividends, distribution of property, and other economic benefits). The amount equivalent to the amount calculated pursuant to the provisions of a Cabinet Order (referred to as the "taxable amount") shall be considered as the amount of profit of the domestic corporation that is the specially-related shareholder, etc., and shall be included in the amount of profit of the domestic corporation.

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Outline (Article 66-9-2 to 66-6-9-5)

- Shareholders of domestic corporations indirectly hold at least 80% of the shares of domestic corporations through foreign corporations (parent companies) located in lightly taxable countries (tax less than 20%) due to reorganization.
- The foreign corporation is subject to the applicable income in each fiscal year, and the sum calculated based on the percentage of the resident or domestic corporation that is a shareholder of the foreign corporation is added to the income of those persons. In other words, this system is based on the premise that a foreign corporation intervenes between a domestic corporation's shareholders and the domestic corporation through reorganization, and that the domestic corporation's shareholders indirectly own the domestic corporation through the foreign corporation.

Important provisions ① Taxpayer ② (Article 66-9-2 ① Measures 20-20 の ③)

- Domestic corporations to which this tax system applies are "domestic legal corporations that are special related shareholders"
- "Specially-related shareholders" refer to those who fall under "specified shareholders" and individuals and legal entities with special relationships with these persons.

7 Basic provision of foreign tax credits (Article 69 of the Corporation Tax Law, Articles 141 to 150 of the Enforcement Order of the Corporation Tax Law)

Article 69 of the Corporation Tax Law

If a domestic corporation pays foreign corporation tax in each fiscal year, the amount of income for that fiscal year shall be calculated in accordance with Article 66, paragraphs 1 to 3 (corporate tax on income in each fiscal year). (Tax rate), the amount of foreign corporate tax up to the amount calculated by the Cabinet Order ("deduction limit"), which corresponds to the amount of foreign income in the relevant business year ("Deductible foreign corporate tax") is deducted from the corporate tax on income for the relevant business year.

Overview: Foreign corporate tax (Article 69 of the Corporation Tax Law, Article 141 to Article 150 of the Enforcement Order of the Corporation Tax Law)

What is a foreign corporation tax? \Rightarrow Taxes imposed by foreign or local governments based on the income of corporations based on foreign laws and regulations.

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Important provisions 1 Calculation method of deduction limit (Corporate Tax Law Article 69, Corporate Tax Law Enforcement Ordinance Articles 141 to 150)

Foreign tax credit limit

A or B, whichever is less

A: Deductible foreign corporate tax paid in the current period

B: Amount calculated based on the following formula

Worldwide income for the current term \times Corporate tax amount on foreign income (Note) for the current term

Worldwide income for the current fiscal year (Note) Foreign income means the amount of income other than domestic source income out of the worldwide income. Important Provision 2-Deduction shortfall and carry-over of deduction allowance-(Law 142-230, Law Act 23-2-1)

Deduction shortfall, deduction surplus carryover

- Deductible foreign corporate tax> Deduction limit ⇒ Deductible for 3 years
- Deductible foreign corporate tax <deduction limit ⇒ extra allowance for 3 years

8) Basic Provisions on Dividends Received from Foreign Subsidiaries (Article 23-2 of Corporate Tax Law and Law 4 of Law 22)

• If there is an amount of dividends of surplus that the domestic corporation receives from the foreign subsidiary, amount of dividends, of the surplus will be equivalent to the amount of expenses related to the amount of dividends, etc. of the surplus. The amount deducted from the amount calculated pursuant to the provisions shall not be included in the amount of profit in domestic corporations. a Cabinet Order shall presume that the

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Purpose (2 of Law 23, 4 of Law 22)

- Eliminate double international taxation
- Promote the return of funds from overseas
- For this purpose, a system is set up in which domestic corporations receive tax-free dividends received from foreign subsidiaries

Important provisions 1 (CIT Law 23-2)

- 95% of dividends received by a domestic corporation from a foreign subsidiary (25% or more shareholding (Note)) is not included in the profit.
- (Note) If the double tax exclusion clause of the tax treaty is stipulated, the judgment will be made based on the ratio stipulated in the tax treaty (decree 22-4⁽²⁾). For example, more than 10% in the US, Australia and Brazil. Buddha more than 15%.

Important Provision 2 Exemption (CIT Law 23-2)

Exemption

All or a part of dividends are included in the deductible amount for income calculation at the location of the foreign subsidiary, Example: Australia's preferred dividend, Brazil's dividend

(2) Deemed dividends on shares to be acquired as treasury shares

Important Provisions 3 Procedures (CIT Law 23-2, CIT Law 39-2, CIT Law 69)

• In order to be included in the profit calculation, it is necessary to describe the details and save the documents in the final return

Important Provision 4: Non-participation in foreign withholding taxes related to dividends, etc.

- No entry of foreign withholding taxes related to dividends
- In the case of exemption from profits, the amount of foreign withholding tax, related to the dividend will not be deductible and will not be eligible for foreign tax credit.

9 Basic provisions for taxation of donations to foreign parties (Article 66-4-③ of the Special Taxation Measures Law)

• Of the amount of donations paid by the corporation in each fiscal year, those donated to foreign-related parties relating to the corporation shall not be included in the amount of deductible in calculating the amount of income for each fiscal year of the corporation.

Important Provision 1 (1) Scope of Foreign Affairs (Act 66-4, Measures 39, 12-④)

• The foreign tax-related foreign party is a foreign corporation defined in the TP tax, and is a diplomatic corporation with a 50% or more capital relationship with a domestic corporation or a foreign corporation with a substantial control relationship.

Important Provision 2 Confirmation of transfer pricing taxation and donation tax application : TP administration guidelines

- If money or other assets or economic benefits are donated or provided free of charge in transactions with foreign parties, the donated or provided amount is subject to donation taxation.
- However, it is difficult to judge donation taxation and transfer pricing taxation in the tax investigation, apply donation taxation if it is clear that the purpose is financial support such as interest-free lending, cost burden.
- In this case, there is no mutual agreement under the tax treaty.

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Important provisions: Taxation of donations under the Corporation Tax Law (CIT Law 37)

• General donation taxation

• (A+B) $\times \underline{1}$ =Deduction limit 4

A: Capital at the end of period \times number of months of current period $\times 0.25\%$

12 B: Income amount before donation expenditure $\times 2.5\%$

10 Basic translation rules for foreign currency transactions (Article 61-8 of the Corporation Tax Law)

- (Conversion of foreign currency transactions)
- Article 61-8 (1) The domestic corporation conducts transactions in foreign currencies, the amount of such foreign currency transactions shall be converted into yen (meaning that the amount expressed in a foreign currency has been converted to the amount expressed in Japanese currency). Shall be the amount converted at the foreign exchange trading price at the time of conducting the foreign currency transaction.

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Important provisions 1-yen conversion method / occurrence
conversion method (CIT Law 61-8, 61-9, Income Law 57-3)

• Principle: Telegraphic Transfer Middle rate (TTM)

• Exception (subject to continued application)

Revenue, Assets......Telegraph Transfer Buying (TTB) Costs / liabilities Telegraph Transfer Selling (TTS)

Important Provision 2 (2) Term-end conversion method (foreign currency assets) (CIT Law 61-9, Law 122-4, 7)

- 1. Foreign currency receivables and payables:Conversion method at the time of accrual or at the end of the period
- 2. Foreign currency securities:
- a) Trading securities:Exchange method at end of period
- b) Redemption securities:Conversion method at the time of accrual or at the end of the period
- c) Securities other than a) and b):Conversion method at the time of occurrence
- 3. Foreign currency deposits:Conversion method at the time of accrual or at the end of the period

4. Foreign currencyConversion method at end of period

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11 Basic withholding tax provisions for nonresidents and foreign corporations (Income Tax Law Article 212-213)

• When a domestic corporation pays certain domestic withholding income to a non-resident or foreign corporation in Japan, it is necessary to collect and pay withholding tax on those withholding income.

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12. Basic Consumption Tax Provision (Article 2 Consumption Tax Amendment Law Supplementary Provision 42)

- Reverse charge method: When the service is provided from abroad, the foreign trader is provided with tax exemption, and the domestic trader who is the purchaser (buyer) is obliged to pay the consumption tax (VAT).
- In the normal case, the service provider is liable for tax payment, but this is called because the buyer side is liable for tax payment.
- However, the purchaser (purchaser) can receive the purchase tax credit.

Overview of the reverse charge method

- 2008 EC Directive: In January 2015, VAT on e-commerce, telecommunications and broadcasting services must be taxed at the recipient's location in Europe, regardless of the location of the provider or recipient.
- In the tax reform in 2015, the low provision of services related to eeconomics performed by foreign operators depends on whether they are "business transactions" or "consumer transactions" depending on whether they are "reverse charge". The taxation obligation has been changed to the "method" and "foreign company declaration method".

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9 GAAR

What is the GAAR?

- Feathers of GAAR (General Anti-Avoidance Rules)
- Domestic laws stipulate, tax authorities avoid tax avoidance legislation
- A provision that gives the tax authority to deny tax benefits for transactions whose sole purpose is to gain tax benefits. A general rule that covers a wide range of applicable taxes and applies to income tax, corporate tax, inheritance tax, and other tax items.
- GAAR has been introduced in 24 countries around the world, and G20 countries without GAAR include Japan, South Korea, Indonesia, Saudi Arabia, Mexico, Argentina, Russia and Turkey.

★ GAAR Part 2 GAAR of Japan

Individual disclaimers

- Excessive interest tax, undercapitalization, LOB
- (GAAR of Japan)
- The act calculation denial rule, which denies the effect of "acts" or "calculations" of corporations that result in "unsuccessful" reduction of corporate tax burden, and allows taxation to be recalculated to the expected normal act calculation, is introduced.
- Regulations against the calculation of family company behavior (before the war)
- Prohibition of calculation of actions related to reorganization (2001)
- Provisions against the calculation of conduct by consolidated corporations (2002)
- Prohibition of Act Calculation Regarding Business Succession Tax System (2009)

★ Grounding legal acts of GAAR

U.S. type

IRC Article 7701 (o) IREconomic Substance Doctrine (ESD)

German type

Article 42 of the General Tax Law (Provision for Denial of Tax Avoidance)

British type

Article 207 of the Finance Law 2013 (judgment of structured transactions and abuse)

Belgian type

GAAR method (Private law of Sham transaction)

French type

Article 64 of the Tax Procedures Act (Private Law Abuse Doctrine)

Chinese type

Article 47 of the Corporate Income Tax Law (Economic realism and economically reasonable business purpose)

★ US GAAR: IRC Article 7701 (o) 2010 Act

- ESD (Economic Substance Doctrine): Based on common law axioms, instead of newly stipulating GAAR which is a general rule of tax avoidance.
- ESD requirements and definitions
- 1. The transaction has changed the economic situation of the taxpayer in a substantive aspect different from the federal income tax (objective requirement)
- 2. The taxpayer has a different substantive purpose from the federal income tax in conducting the transaction (subjective requirement)

★ ★ UK GAAR (2013 GAAR regulations: Limited abuse prevention measures-not prevent tax avoidance!)

Proofing responsibility Tax authority

<u>Disavowal requirement:</u> Abusive criteria (←not avoidance)

- (1) Whether the actual results of the structured transaction are consistent with the principles in the legislative intent of the tax law.
- (2) Is the process of producing the results planned or involves abnormal means?
- (3) Is the structured transaction intended to find defects in tax law provisions?

GAAR criteria: double rationality test

- ① Is structured transaction a reasonable activity?
- ② Can you reasonably judge about structured transactions?

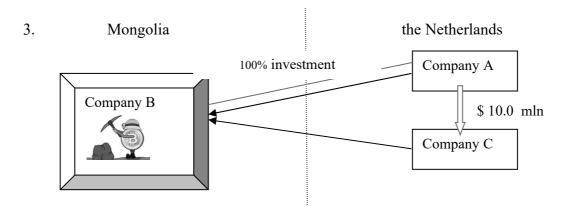
★Tax evasion principle in common law (Anglo-American approach)

- 1. business purpose
- 2. step transaction
- 3. substance over form
- 4. sham transaction
- 5. economic substance

International tax audit cases

Case-1

- 1. A subsidiary Company B, 100% owned by Company A of the Netherlands, holds a mining extraction license in Mongolia.
- 2. The Company A sold its subsidiary company B to the Company C of the Netherlands for \$ 10.0 mln.



- 4. No taxes have been paid in Mongolia from this transaction. The Company C wants to buy a mining extraction license from Company B.
- 5. In according to the provision 17.2.7, Article 17 of the Corporate income tax law of Mongolia income from sale of right is taxed at 30 %. There is no tax treaty between Mongolia and the Netherlands (terminated).
- 6. Any tax has not been imposed. There is not enough data basis to exchange information. An amendment should be made to the tax law. (What kind of provision would you like to propose?)

ECONOMIC ENTITY INCOME TAX

Article 17. Tax Rate

- 17.1 If annual taxable income determined in accordance with paragraphs 16.2, 16.8, and 16.9 of this law is 0-3.0 billion togrogs, it shall be taxed at the rate of 10 percent. If annual taxable income exceeds 3.0 billion togrogs, it shall be 300.0 million togrogs plus 25 percent of income exceeding 3.0 billion togrogs.
- 17.2 The following taxpayer's income shall be taxed at the following rates:
 - 17.2.1 Dividend income at 10 percent;
 - 17.2.2 Royalty income at 10 percent;
 - 17.2.3 Income from quizzes, gambling, and lotteries determined in paragraph 16.6 of this law at 40 percent;
 - 17.2.4 Income from sale or rental of erotic publication, book, and video recording and service of erotic performance at 40 percent;
 - 17.2.5 Income from sale of immovable property at 2 percent;
 - 17.2.6 Interest income at 10 percent;
 - 17.2.7 Income from sale of right at 30 percent;
 - 17.2.8 In the case of the permanent establishment of a foreign economic entity transfers its own profit overseas, the transferred income at the rate of 20 percent;
 - 17.2.9 The following income earned in the territory of Mongolia or earned from sources within Mongolia by a taxpayer who does not reside in Mongolia shall be taxed at the rate of 20 percent:
- a) Dividend received from an economic entity that is registered and operates in Mongolia;
 - b) Payment of interest and payment for issuing a guarantee;

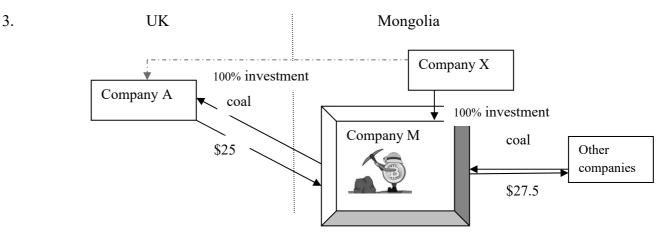
c) Royalty income, interest income on finance lease, payment for director's fee, payment for rent and income from letting for use of tangible and intangible asset;

d) Income from goods sold, work performed, and service provided in the territory of Mongolia.

e) Income earned from sources within Mongolia from service provided, work performed directly or electronically.

Case-2

- 1. This transaction has been made between Company A of the UK and Company M of Mongolia. Company M and Company A are 100 % owned by the Company X.
- 2. Company A buys a coal from Company M for \$25 per 1 tn. Company M sells the coal to other domestic companies for \$27.5 per 1 ton.



- 4. Sale price of a coal between related parties is lower than market price.
- 5. Provision 11.18 Article 11 of the Corporate income tax law of Mongolia. If parties specified in article 6 of this law have sold or transferred goods, performed work, or rendered services among themselves below or above fair market value, the tax authority shall determine gross taxable income of such goods, work, and services based on value involving transactions of similar goods, work and services among non-related parties.

11.2. The member of Government in charge of finance shall approve a methodology for using benchmark prices specified in paragraphs 7.5 and 11.1 of this law.

- 6. Any tax has not been imposed on \$2.5 (\$27.5-\$25=\$2.5). The reason is that there was no proofing document that Company A and Company X are related parties.
- 7. It is necessary to have a database to be used for international taxation purposes. (Discussion on how to create a database)

ECONOMIC ENTITY INCOME TAX

Article 7. Gross Taxable Income

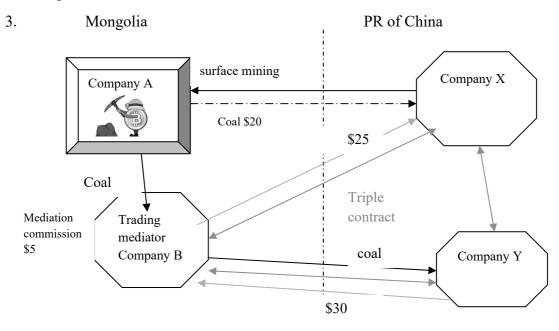
- 7.1 Income earned for the tax year in the territory of Mongolia, from a source in Mongolia and in a foreign country by a taxpayer specified in paragraph 5.3 of this law shall be subject to tax.
- 7.2 Income earned for the tax year in the territory of Mongolia and from a source in Mongolia by a taxpayer specified in paragraph 5.4 of this law shall be subject to tax.
- 7.3 The following income of a taxpayer shall be subject to tax:
 - 7.3.1 Income from activities;
 - 7.3.2 Income from property;
 - 7.3.3 Income from sale of property.
- 7.4 Gross taxable income shall be determined by deducting exempt income.
- 7.5 In case of the exchange of goods, works, and services, gross taxable income shall be determined in reference to value of similar goods, works, and services sold among non-related parties.
- 7.6 An exchange rate established by the Bank of Mongolia for the day shall be used in converting income earned and expenses incurred in a foreign currency to togrogs.

Article 1. Article 11. Determining taxable income from goods sold and work and services provided among related parties

- 11.1 If parties specified in article 6 of this law have sold or transferred goods, performed work, or rendered services among themselves below or above fair market value, the tax authority shall determine gross taxable income of such goods, work, and services based on value involving transactions of similar goods, work and services among non-related parties.
- 11.2 The member of Government in charge of finance shall approve a methodology for using benchmark prices specified in paragraphs 7.5 and 11.1 of this law.

Case-3

- 1. Company A and trading mediator Company B of Mongolia, Company X and Company Y of PR of China.
- 2. The Company X of the PR of China is performing surface mining for the Company A. In accordance to the contract the payment for surface mining performed is to be paid by the coal on a barter base. Price for per 1 ton coal is \$20. The Company X sells the coal to the Company Y of PR of China through the trading mediator Company B for \$30 per 1 ton.



- 4. Company A withheld royalty (payment for use of mineral resources) and VAT from income of Company X and paid to the budget. An income transferred from Company B to Company X is not taxed considering as withholding tax has been imposed on this income already. Corporate income tax has not been imposed.
- 5. Provision 5.4 of the Corporate income tax law of Mongolia: A taxpayer that does not reside in Mongolia shall include the following economic entities:

Provision 5.4.1 of the Corporate income tax law of Mongolia: A foreign economic entity that conducts its business activities in Mongolia under its PE;

Provision 17.2.9 of the Corporate income tax law of Mongolia: The following income earned in the territory of Mongolia or earned from sources within Mongolia by a taxpayer who does not reside in Mongolia shall be taxed at the rate of 20 %;

Provision 3, Article 5 of the Agreement between the Government of the Mongolian People's Republic and the Government of the People's Republic of China for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income dated 1991-08-26: "The term permanent establishment means a building site, a construction, assembly or installation project or supervisory activities in connection therewith, but only where such site, project or activities continue for a period of more than 18 months"

- 6. Company B would had been considered as PE of the Company X and accordingly should be taxed corporate income tax. Also VAT and Corporate income tax ought to be imposed on income transferred by the trading mediator.
- 7. Provisions of law concerning international taxation should be thoroughly examined and amended.

ECONOMIC ENTITY INCOME TAX

Article 5. Taxpayer

- 5.1 An economic entity that earns gross taxable income for the tax year or that is liable to pay tax under this law, even though the same income may not have been earned, shall be a taxpayer.
- 5.2 A taxpayer specified in paragraph 5.1 of this law shall be classified as a permanent residenttaxpayer or non-resident taxpayer of Mongolia.
- 5.3 A taxpayer that resides in Mongolia on a permanent basis shall include the following economic entity:
 - 5.3.1 An economic entity formed within the laws of Mongolia;
 - 5.3.2 A foreign economic entity that has its headquarter office located in Mongolia;
- 5.4 A taxpayer that does not reside in Mongolia shall include the following economic entities:
 - 5.4.1 A foreign economic entity that conducts its business activities in Mongolia under its permanent establishment;

5.4.2. A foreign economic entity that earns income in the territory of Mongolia or from a source in Mongolia in forms other than that specified in subparagraph 5.4.1 of this law.

- 5.5 A permanent establishment shall include the following units of the economic entity specified in subparagraph 5.4.1 of this law that partially or wholly conduct business activities:
 - 5.5.1 Branch (workshop and section);
 - 5.5.2 Factory;
 - 5.5.3 Trade and service places;
 - 5.5.4 Oil and natural gas well and a mine that extracts natural resource.

Article 17. Tax Rate

- 17.1 If annual taxable income determined in accordance with paragraphs 16.2, 16.8, and 16.9 of this law is 0-3.0 billion togrogs, it shall be taxed at the rate of 10 percent. If annual taxable income exceeds 3.0 billion togrogs, it shall be 300.0 million togrogs plus 25 percent of income exceeding 3.0 billion togrogs.
- 17.2 The following taxpayer's income shall be taxed at the following rates:
 - 17.2.10 Dividend income at 10 percent;
 - 17.2.11 Royalty income at 10 percent;
 - 17.2.12 Income from quizzes, gambling, and lotteries determined in paragraph 16.6 of this law at 40 percent;
 - 17.2.13 Income from sale or rental of erotic publication, book, and video recording and service of erotic performance at 40 percent;
 - 17.2.14 Income from sale of immovable property at 2 percent;
 - 17.2.15 Interest income at 10 percent;
 - 17.2.16 Income from sale of right at 30 percent;
 - 17.2.17 In the case of the permanent establishment of a foreign economic entity transfers its own profit overseas, the transferred income at the rate of 20 percent;
 - 17.2.18 The following income earned in the territory of Mongolia or earned from sources within Mongolia by a taxpayer who does not reside in Mongolia shall be taxed at the rate of 20 percent:

a) Dividend received from an economic entity that is registered and operates in Mongolia;

b) Payment of interest and payment for issuing a guarantee;

c) Royalty income, interest income on finance lease, payment for director's fee, payment for rent and income from letting for use of tangible and intangible asset;

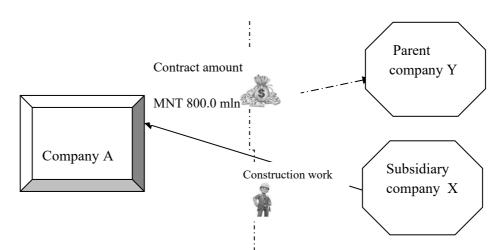
d) Income from goods sold, work performed, and service provided in the territory of Mongolia.

e) Income earned from sources within Mongolia from service provided, work performed directly or electronically.

Case-4

- 1. This transaction has been made between Company A of Mongolia and Company X of the PR of China.
- 2. There is a contract on construction work and total amount of the contract performance is MNT 800.0 mln.
- 3. Mongolia

PR of China



- 4. Payment for the construction work has been transferred not to the contract partner, but to its the parent company Y without taxation. Taxes were not withheld on income transferred abroad.
- 5. Provision 17.2.8, Article 17 of the Corporate income tax law of Mongolia: In the case of the PE of a foreign economic entity transfers its own profit overseas, the transferred income at the rate of 20 percent;

Provision 3, Article 5 of the Agreement between the Government of the Mongolian People's Republic and the Government of the People's Republic of China for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income dated 1991-08-26: "The term permanent establishment means a building site, a construction, assembly or installation project or supervisory activities in connection therewith, but only where such site, project or activities continue for a period of more than 18 months"

Taxes	Taxes that could have been imposed (MNT)	Taxes imposed	Difference (MNT)
CIT	800 000 000*10%=80 000 000	0	80 000 000
VAT	800 000 000*10%=80 000 000	0	80 000 000
Total	160 000 000	0	160 000 000

7. Provisions concerning international taxation should be inserted in detail into the General taxation law of Mongolia.

6.

Article 17. Tax Rate

- 17.1If annual taxable income determined in accordance with paragraphs 16.2, 16.8, and 16.9 of this law is 0-3.0 billion togrogs, it shall be taxed at the rate of 10 percent. If annual taxable income exceeds 3.0 billion togrogs, it shall be 300.0 million togrogs plus 25 percent of income exceeding 3.0 billion togrogs.
- 17.2 The following taxpayer's income shall be taxed at the following rates:
 - 17.2.1 Dividend income at 10 percent;
 - 17.2.2 Royalty income at 10 percent;
 - 17.2.3 Income from quizzes, gambling, and lotteries determined in paragraph 16.6 of this law at 40 percent;
 - 17.2.4 Income from sale or rental of erotic publication, book, and video recording and service of erotic performance at 40 percent;
 - 17.2.5 Income from sale of immovable property at 2 percent;
 - 17.2.6 Interest income at 10 percent;
 - 17.2.7 Income from sale of right at 30 percent;
 - 17.2.8 In the case of the permanent establishment of a foreign economic entity transfers its own profit overseas, the transferred income at the rate of 20 percent;
 - 17.2.9 The following income earned in the territory of Mongolia or earned from sources within Mongolia by a taxpayer who does not reside in Mongolia shall be taxed at the rate of 20 percent:

a) Dividend received from an economic entity that is registered and operates in Mongolia;

b) Payment of interest and payment for issuing a guarantee;

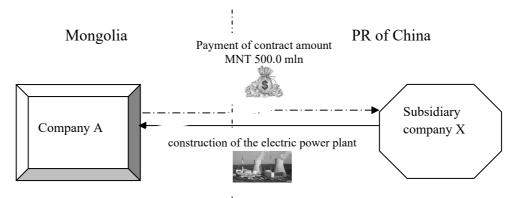
c) Royalty income, interest income on finance lease, payment for director's fee, payment for rent and income from letting for use of tangible and intangible asset;

d) Income from goods sold, work performed, and service provided in the territory of Mongolia.

e) Income earned from sources within Mongolia from service provided, work performed directly or electronically.

Case-5

- 1. This transaction has been made between Company A of Mongolia and Company X of the PR of China.
- 2. There is contract for the construction of the electric power plant and the contract amount is MNT 500.0 mln.
- 3.



- 4. No taxes have been imposed on the contract amount, as well as no taxes have been withheld from the transferred amount.
- 5. Provision 17.2.8, Article 17 of the Corporate income tax law of Mongolia: In the case of the PE of a foreign economic entity transfers its own profit overseas, the transferred income at the rate of 20 percent;

Provision 3, Article 5 of the Agreement between the Government of the Mongolian People's Republic and the Government of the People's Republic of China for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income dated 1991-08-26: "The term permanent establishment means a building site, a construction, assembly or installation project or supervisory activities in connection therewith, but only where such site, project or activities continue for a period of more than 18 months"

6.

Taxes	Taxes that could have been imposed (MNT)	Taxes imposed	Difference (MNT)
CIT	500 000 000*10%=50 000 000	0	50 000 000
VAT	500 000 000*10%=50 000 000	0	50 000 000
Total	100 000 000	0	100 000 000

7. Provision concerning international taxation should be inserted in detail into the General taxation law of Mongolia.

Article 17. Tax Rate

- 17.1If annual taxable income determined in accordance with paragraphs 16.2, 16.8, and 16.9 of this law is 0-3.0 billion togrogs, it shall be taxed at the rate of 10 percent. If annual taxable income exceeds 3.0 billion togrogs, it shall be 300.0 million togrogs plus 25 percent of income exceeding 3.0 billion togrogs.
- 17.2 The following taxpayer's income shall be taxed at the following rates:
 - 17.2.1 Dividend income at 10 percent;
 - 17.2.2 Royalty income at 10 percent;
 - 17.2.3 Income from quizzes, gambling, and lotteries determined in paragraph 16.6 of this law at 40 percent;
 - 17.2.4 Income from sale or rental of erotic publication, book, and video recording and service of erotic performance at 40 percent;
 - 17.2.5 Income from sale of immovable property at 2 percent;
 - 17.2.6 Interest income at 10 percent;
 - 17.2.7 Income from sale of right at 30 percent;
 - 17.2.8 In the case of the permanent establishment of a foreign economic entity transfers its own profit overseas, the transferred income at the rate of 20 percent;
 - 17.2.9 The following income earned in the territory of Mongolia or earned from sources within Mongolia by a taxpayer who does not reside in Mongolia shall be taxed at the rate of 20 percent:

a) Dividend received from an economic entity that is registered and operates in Mongolia;

b) Payment of interest and payment for issuing a guarantee;

c) Royalty income, interest income on finance lease, payment for director's fee, payment for rent and income from letting for use of tangible and intangible asset;

d) Income from goods sold, work performed, and service provided in the territory of Mongolia.

e) Income earned from sources within Mongolia from service provided, work performed directly or electronically.

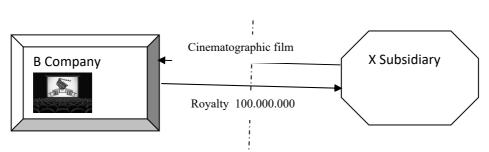
Case-6

- 1. Transaction is made between "X" Company of Republic of Korea (ROK) and "B" Company of Mongolia.
- 2. Right to broadcast cinematographic film is purchased from "X" Company of ROK for 100.0 million tugrugs.

3.

Mongolia

ROK



- 4. Royalty in an amount of 100.0 million tugrugs is transferred to ROK without withholding tax is being imposed in Mongolia. There is no conflict, however such royalty may be taxed in Mongolia.
- 5. "Convention between Mongolia and Republic of Korea for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income" dated on 17 April 1992 states:

12.1 "Royalties arising in a Contracting State and paid to a resident of the other Contracting State maybe taxed in that other Contracting State".

12.2 "However, such royalties may also be taxed in the Contracting State in which they arise, and according to the laws of that Contracting State, but if the reciepient is the beneficial owner of the gross amount of the royalties".

12.3 "The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematographic films and films or tapes for radio or television broadcasting....".

Type of	Taxes that would have been	Taxes imposed	Difference
tax	imposed		
CIT	100 000 000*10%=10 000	0	10 000 000
	000		
VAT	100 000 000*10%=10 000	0	10 000 000
	000		
Total	20 000 000	0	20 000 000

6. Withholding tax can be imposed on such royalty while allowing foreign tax credit in ROK.

7. Provisions related to international taxation should be specified in detail in the General Law of Taxation.

Case-7

3.

- 1. "Z" Company of Mongolia is subsidiary of "X" Company that is listed in Stock Exchange of Singapore, and extracts and sells coking coal. "X", parent company in Singapore set up its subsidiary "Y" in Inner Mongolia of the People's Republic of China (PRC).
- 2. "Z" Company sells a tonne of coal of the same classification to "Y" Company of PRC for 120 RMB, and to other companies for 135 RMB.
 - (Mongolia) (China) (Mongolia) (China) (Tri Company (Coal mine) 1 tonne 135Y (Tri Company (Coal mine) 1 tonne 120Y (Tri Subsidiary in Inner Mongolia (Singapore) (Singapore)
- 4. Selling price of coal to related person is unreasonably lower than the market rate (2016).
- 5. Article 11.1 of the Corporate Income Tax Law states "If parties specified in article 6 of this law have sold or transferred goods, performed work, or rendered services among themselves below or above fair market value, the tax authority shall determine gross taxable income of such goods, work, and services based on value involving transactions of similar goods, work and services among non-related parties". Article 11.6.1 states "the person maintaining following relation with the taxpayer shall be considered as "Related person": 6.1.1. holds 20 or more than 20 percent of ordinary share;
- 6. 305.0 million tugrug was imposed as due based on Article 74.1 of the General Law of Taxation that reads as "If taxpayer has hidden taxable income and taxable items other than income through following actions or inaction and is not subject to criminal liability, the tax administration and state tax inspector shall make him repay the tax and impose a fine equal to 30 per cent of the tax payment amount:"

ECONOMIC ENTITY INCOME TAX

Article 11. Determining taxable income from goods sold and work and services provided among related parties

- 11.3 If parties specified in article 6 of this law have sold or transferred goods, performed work, or rendered services among themselves below or above fair market value, the tax authority shall determine gross taxable income of such goods, work, and services based on value involving transactions of similar goods, work and services among non-related parties.
- 11.4 The member of Government in charge of finance shall approve a methodology for using benchmark prices specified in paragraphs 7.5 and 11.1 of this law.

GENERAL LAW ON TAXATION

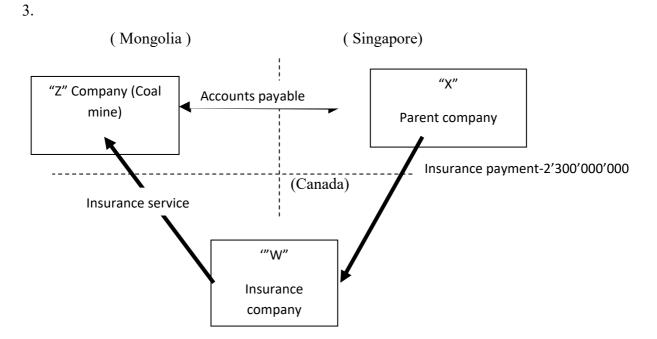
Article 74. Liability to be imposed on violators of legislation

74.1. If taxpayers who have concealed taxable income and items other than income, are not imposable criminal charges based on the following actions, the tax administration and state tax inspectors shall have the taxes payable paid and impose penalty equal to 30 percent of taxes payable:

- 74.1.1. physically concealed;
- 74.1.2. transferred to individuals and legal entities without valid reasons;
- 74.1.3. left out of accounting reports, balances and tax reports;
- 74.1.4. quantity, volume and prices of which were decreased in accounting reports, balances and tax reports, or increased costs and other items to be deducted in order to decrease;
- 74.1.5. destroyed, concealed or lost accounting, bookkeeping documents, tax reports and other relevant documents;
- 74.1.6. executed false documents, or modified them;
- 74.1.7. made it impossible to issue tax reports due to failure to maintain accounting and compile necessary documents;
- 74.1.8. deceived or concluded false agreements and treaties;
- 74.1.9. created false payables;
- 74.1.10. transferred or let others use the legal entity's name, address, seal, stamp, accounts, state registration certificate, permits, and other property and documents.
- 74.2. If taxes are not paid on time, to impose 0.1 percent penalty per day on outstanding balance of taxes payable.
- 74.3. Fines shall be imposed on taxes in arrears and taxes not paid on time in accordance with 74.1 and 74.2 of this law. Amount of the fine shall not exceed 50 percent of the outstanding tax amount.
- 74.4. Fines specified in articles 74, 75 of this law shall not pertain to penalty specified in article 232 of the Civil Code of Mongolia.

Case-8

- 1. "Z" Company of Mongolia is subsidiary of "X" Company that is listed in Stock Exchange of Singapore, and extracts and sells coking coal. Fixed assets of the coal mine of "Z" Company in Mongolia is insured with "W" insurance company in Canada.
- 2. Annual insurance payment of 2.3 billion tugrugs due by "Z" Company is paid by "X" Company on behalf of "Z". Thus accounts payable is created for "Z" Company.



- 4. The fact that assets insurance is paid by "X" parent company to "W" insurance company in Canada leads to increase in the amount of accounts payable of "Z" by 2.3 billion tugrugs claiming as expenses. No tax is withheld and paid on insurance income that is sourced in Mongolia.
- 5. According to Article 4.1.6 of the Corporate Income Tax Law the "Withholder" refers to an entity obliged to withhold tax imposed on taxpayer's income in conformity with this law and transfer the withholding to the state and local budget; and according to Article 17.2.9 "The following income of a taxpayer who does not reside in Mongolia earned in Mongolia shall be taxed at the rate of 20 percent:"
- 6. 340.0 million tugrugs was re-assessed according to provision of Article 17.2.9.e "income from work and service sourced in Mongolia that is provided either directly or electronically"

ECONOMIC ENTITY INCOME TAX

Article 2. Article 4. Definition of legal terminology

- 4.1 The following terms used in this law shall have the following meanings:
 - 4.1.1 "Income earned in a foreign country" refers to a taxpayer's income earned in a foreign country and income from activities, property, and sale of property as specified in paragraph 7.3 of this law;
 - 4.1.2 "Goods" refers to movable and immovable property other than monetary assets;
 - 4.1.3 "Immovable property" is as defined in paragraphs 84.3 and 86.2 of the Civil Code;
 - 4.1.4 "Intangible asset" refers to a non-material asset that has no physical substance, has a relatively long useful life, and gives its owner a right, preferential right, or exclusive right;
 - 4.1.5 "Economic entity" refers to a company, partnership, cooperative, or an enterprise with state and local property registered with the state register and that conducts business activities, and other similar legal entity obliged to pay income tax;
 - 4.1.6 "Withholder" refers to an entity obliged to withhold tax imposed on taxpayer's income in conformity with this law and transfer the withholding to the state and local budget;
 - 4.1.7 "Foreign currency exchange rate gain (loss)" refers to exchange rate gain (loss) derived from transactions such as a purchase of foreign currency and payment of receivables and payables in a foreign currency.

Article 17. Tax Rate

17.1 If annual taxable income determined in accordance with paragraphs 16.2, 16.8, and 16.9 of this law is 0-3.0 billion togrogs, it shall be taxed at the rate of 10 percent. If annual taxable income exceeds 3.0 billion togrogs, it shall be 300.0 million togrogs plus 25 percent of income exceeding 3.0 billion togrogs.

17.2The following taxpayer's income shall be taxed at the following rates:

- 17.2.1 Dividend income at 10 percent;
- 17.2.2 Royalty income at 10 percent;
- 17.2.3 Income from quizzes, gambling, and lotteries determined in paragraph 16.6 of this law at 40 percent;
- 17.2.4 Income from sale or rental of erotic publication, book, and video recording and service of erotic performance at 40 percent;
- 17.2.5 Income from sale of immovable property at 2 percent;
- 17.2.6 Interest income at 10 percent;
- 17.2.7 Income from sale of right at 30 percent;
- 17.2.8 In the case of the permanent establishment of a foreign economic entity transfers its own profit overseas, the transferred income at the rate of 20 percent;
- 17.2.9 The following income earned in the territory of Mongolia or earned from sources within Mongolia by a taxpayer who does not reside in Mongolia shall be taxed at the rate of 20 percent:

a) Dividend received from an economic entity that is registered and operates in Mongolia;

b) Payment of interest and payment for issuing a guarantee;

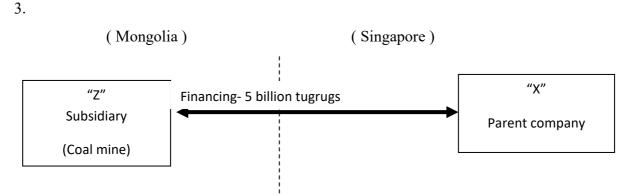
c) Royalty income, interest income on finance lease, payment for director's fee, payment for rent and income from letting for use of tangible and intangible asset ;

d) Income from goods sold, work performed, and service provided in the territory of Mongolia.

e) Income earned from sources within Mongolia from service provided, work performed directly or electronically.

Case-9

- 1. "Z" Company of Mongolia is subsidiary of "X" Company that is listed in Stock Exchange of Singapore, and extracts and sells coking coal.
- 2. "X", parent company in Singapore provided investment equal to 5.0 billion tugrugs to its "Z" subsidiary. In practice the parent company in Singapore raised funding from Toronto Stock Exchange through its mining project in Mongolia.



- 4. Investment from the parent company can indeed be deemed as a transaction between related persons without any consideration for which thin capitalization arrangement is made using average interest rate at international financial market. Neither taxes are declared in the Tax return, nor withheld accordingly.
- 5. Article 14 of the Corporate Income Tax Law "Interest expense deductible from gross taxable income", Article 14.3 "If the loan provided by the investor to the taxpayer exceeds three times the capital invested prior to such loan, the deduction shall not be made for interest paid in respect of that exceeding part of loan."
- 6. The loss in the said accounting period is decreased by 5.0 billion tugrugs according to provision that says "... such expense shall be considered as dividend of the investor and and be subject to tax".

ECONOMIC ENTITY INCOME TAX

Article 14. Loan interest to be deemed as deductible expense from gross taxable income

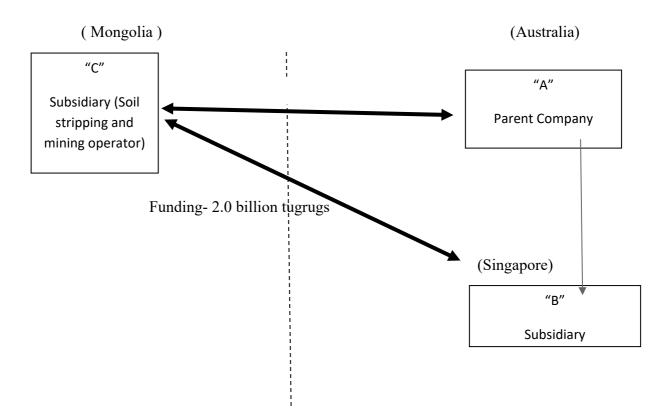
- 14.1Interest payment for a loan borrowed to carry out primary and auxiliary production, work, and services as specified in paragraph 8.1.1 of this law and to purchase property shall be deducted from gross taxable income.
- 14.2A deduction shall not be made in the case of interest paid for a loan borrowed from an individual who resides permanently in Mongolia and controls the taxpayer entity. The expense shall be considered a dividend to the individual and it shall be subject to tax.
- 14.3If the amount of loan granted by an investor to a taxpayer exceeds three times the value of capital previously invested by the investor in the taxpayer, the interest paid for such surplus amount of loan shall not be deducted from gross taxable income and it shall be deemed to be investor's dividend income subject to taxation. (*This subparagraph was amended under the Law dated February 20, 2009*).
- 14.4 In the case of construction of building and installation of equipment are financed by a loan, the interest paid during the construction period shall be added to cost of the construction. The interest paid since the construction is finalized shall be deducted from gross taxable income.

Case-10

- 1. "C" Company is a subsidiary of "A" company of Australia and is a principal contractor (soil stripping and mining) for larger coal mining project in Mongolia. "C" Company is incorporated in Mongolia as a subsidiary of "B" Company that is incorporated according to laws of Singapore. "B" Company of Singapore is a subsidiary of "A" Company of Australia. It means both B and C companies are subsidiaries of "A" Company.
- 2. "A" Company of Australia is a leading company in mining sector in the world, having long experience of soil stripping and mining operation at professional level.

To have operations in Mongolia, "A" Company of Australia needed to set up "C" Subsidiary. Upon reviewing legal framework of Mongolia, "A" Company established its "B" Subsidiary in Singapore with which Mongolia entered into Double tax treaty. The funding will be done through "B" Company.





- 4. Tax audit identifies that "C" Company, registered in Mongolia is a principal operator for larger coal mining projects in Mongolia, engaged in soil stripping and mining, and utilizes own machinery and equipment such as high cost excavator in its operations. These machinery and equipment is purchased under financing of "B" Company that has direct relation with "C" Company, and without any conditions for repayment and any interest charged at market rate.
- 5. The transaction infringes following two provisions: Article 11.1 of the Corporate Income Tax Law "If parties specified in article 6 of this law have sold or transferred goods, performed work, or rendered services among themselves below or above fair market value,

the tax authority shall determine gross taxable income of such goods, work, and services based on value involving transactions of similar goods, work and services among non-related parties", and paragraph 14.3 of Article 14 of the Corporate Income Tax Law (Interest expense deductible from gross taxable income) states that "If the loan provided by the investor to the taxpayer exceeds three times the capital invested prior to such loan, the deduction shall not be made for interest paid in respect of that exceeding part of loan, and the excess shall be deemed as dividend paid to the investor and be taxed accordingly".

- 6. In relation to this transaction, the taxpayer was considered as being failed to declare relevant computation in CIT Tax return, withhold taxes and pay the taxes withheld. For infringement where financial service provided between related persons without any consideration resulted in increase of the amount of long term liabilities, the loan interest was calculated based on average rate at international financial market and thin capitalization arrangement is made accordingly, and taxes that would have been due by CIT tax return were re-assessed.
- 7. "C" Company disagreed with above-mentioned decision and lodged complaint to the Dispute Resolution Council of the GDT.

"C" Company claimed that there is no direct relationship according to the domestic law.

Legal justification specified in the claim is: paragraph 11.1 of Article 11 of the Corporate Income Tax Law "If parties specified in article 6 of this law have sold or transferred goods, performed work, or rendered services among themselves below or above fair market value, the tax authority shall determine gross taxable income of such goods, work, and services based on value involving transactions of similar goods, work and services among non-related parties", paragraph 11.2 of the same Article "The member of Government in charge of finance shall approve a methodology for using benchmark prices specified in paragraphs 7.5 and 11.1 of this law".

The claim states that "If we look at the infringement identified during the tax audit and computation of audit assessment, the financing equal to 2.0 billion tugrugs made during 2012-2016 was deemed as being loan and interest equal to 500,0 thousand tugrugs was considered as being paid to the related person based on market average rate. Such an interest paid for part of loan exceeding debt to equity ratio of 3:1 specified in paragraph 14.3 of Article 14 of the CIT Law or the thin capitalization rule was then considered as dividend. However, it is uncertain and legally unjustified that which specific provision of the tax law or related rules specified in the CIT Law is applied in deeming the financing made in foreign currency (USD) as loan, and what official information source is used as a basis of average rate at international financial market in case of calculating interest rate here concerned. The Resolution #164 of the GDT Commissioner, dated on 31 August 2007 on "Type of domestic goods work and services for which non-arm's length price might be charged in their sales between related persons, and list of sources of information as reference to market price" states so that the interest rate for internal loan between related parties should be based on average annual loan interest of the banks referring to Monthly Statistics bulletin. There is no regulation in domestic tax law regarding establishment of benchmark rate for interest for loan from overseas in foreign currency".

ECONOMIC ENTITY INCOME TAX

Article 3. Article 11. Determining taxable income from goods sold and work and services provided among related parties

- 11.1 If parties specified in article 6 of this law have sold or transferred goods, performed work, or rendered services among themselves below or above fair market value, the tax authority shall determine gross taxable income of such goods, work, and services based on value involving transactions of similar goods, work and services among non-related parties.
- 11.2 The member of Government in charge of finance shall approve a methodology for using benchmark prices specified in paragraphs 7.5 and 11.1 of this law.

Article 14. Loan interest to be deemed as deductible expense from gross taxable income

- 14.1Interest payment for a loan borrowed to carry out primary and auxiliary production, work, and services as specified in paragraph 8.1.1 of this law and to purchase property shall be deducted from gross taxable income.
- 14.2A deduction shall not be made in the case of interest paid for a loan borrowed from an individual who resides permanently in Mongolia and controls the taxpayer entity. The expense shall be considered a dividend to the individual and it shall be subject to tax.
- 14.3If the amount of loan granted by an investor to a taxpayer exceeds three times the value of capital previously invested by the investor in the taxpayer, the interest paid for such surplus amount of loan shall not be deducted from gross taxable income and it shall be deemed to be investor's dividend income subject to taxation. (*This subparagraph was amended under the Law dated February 20, 2009*).
- 14.4 In the case of construction of building and installation of equipment are financed by a loan, the interest paid during the construction period shall be added to cost of the construction. The interest paid since the construction is finalized shall be deducted from gross taxable income.

Curriculum of Follow up training

2018/4/30-2018/5/4

	4/30/2018	5/1/2018	5/2/2018	5/3/2018	5/4/2018
	Mon	Tue	Wed	Thu	Fri
(9:00-12:00)	Pre-test Study on Mongolian case (Case 1-3)	Study on Mongolian case (Case 4-6)	Study on Mongolian case (Case 7-9)	Study on Mongolian case (Case 10,11)	Tax reform of Mongolian international taxation
	Kodera and Ishiguro	Kodera and Ishiguro	Kodera and Ishiguro	Kodera and Ishiguro	Kodera
(13:00-16:00)	Study on Mongolian case (Case 1-3)	Study on Mongolian case (Case 4-6)	Study on Mongolian case (Case 7-9)	Tax reform of Mongolian international taxation	Summary discussion Post-test
	Kodera and Ishiguro	Kodera and Ishiguro	Kodera and Ishiguro	Kodera	Kodera and Ishiguro

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Mongolia International Taxation related law amendment General Tax Law / Corporate Tax Law Q & A

JICA expert Kodera May 2018

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Contents

- What are the international tax issues?
- What kind of revision is needed for Mongolian tax law?
- International tax issues linked to case studies
- What is the point of the revision?
- What are the revised points under the General Tax Law?
- What are the revised points under the Corporate Tax Law?
- What is tax haven measures?

Q: Can you raise all international tax issues?

- Under corporate tax law?
- Under income tax law?
- In the collection law?
- Under general tax law?
- Under the OECD Model Convention?
- Under the UN Model Treaty?
- In BEPS?

Q: How do you think the current tax law should be revised? (General remarks)

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- After completing the case study, what tax laws are missing? Please think!
- Think now with your own head!
- Q Who are the legislators?
- Q Who are the corporate tax inspectors (LTO, tax office)?
- Q Who are the personal income tax inspectors (LTO, tax office)?
- Q Who is the collector?
- Q Any other general administrators?

Q: Please re-link the case study with the points to be revised. (Details)

- Q: What laws are required for each case study? Is it OK for just law? What is the enforcement order? Notice? Please think.
- Q: Can this case study alone cover all issues of Mongolian international tax?
- Q: Is there any other case to consider now, given the theoretical issues of international taxation? If so, make a case now with your own head.

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What is the point of the revision?

- Question: In view of Mongolia's inbound economy, which tax laws need to be revised in order to revise tax laws?
- Answer: It is necessary to have basic international tax rules such as domestic source income rules and transfer pricing tax system.
- Reason II: International organizations such as the OECD have been seeking uniform consistency of international tax regulations in countries such as BEPS.

What is the revision points under General tax Law? Part 1

- Q Why did GAAR clause (16) entered ?
- A: In international tax avoidance cases around the world, it is no longer possible to tax under the individual tax avoidance provisions such as TP and PE.
- R: Provisions such as TP have strict requirements, and international selection for PE and non-residents
- Under income provisions, tax requirements cannot cover real transactions.
- Attention: If you do not apply TP of individual avoidance provisions, if you can not apply GAAR of general law, it is legal theory. "Special law takes precedence over general law."

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What is the revision points under General tax Law? Part 2

- Q: Why did the TP clause (Article 19) enter?
- R: The rules of tax audit are in the general tax law and include transfer pricing tax audit, so it was necessary to introduce the concept of TP in the same general tax law.

What are the revised points under the Corporate Tax Law? Part 1

- Q: What are the most important basic provisions of corporate tax law?
- A: This is a rule of international source income of non-residents and non-residents (Article 4 Additional Expansion).
- R: The basic concept of international tax is the "domestic source income" rule, and foreign corporations and non-residents can only tax on this "domestic source income". If the rules for domestic source income are not established, many tax omissions occur. Thus, in Japan, a fairly detailed concept is stipulated at the beginning of the international tax part of corporate tax and income tax.

What are the revised points under the Corporate Tax Law? Part 2

- Q: Given the importance of the mineral resource industry in Mongolia, what are the most important basic provisions in the corporate tax law?
- A: Is a prescribed as PE (6 Article new).
- R1: There are various types of PEs, such as workshops, factories, branches, and subsidiaries, in which foreign corporations conduct resource mining operations in Mongolia, thus it is important to strengthen domestic law, because of occurring tax omission.
- R2: PR provisions of the tax treaty is too simple, and can not deal with the reality of the problem.
- R3: BEPS has additional requirements to prevent PE tax omissions. In addition, it is OK to accede to the BEPS Convention, but that alone is not enough. If domestic tax laws are not developed, Mongolia will omit taxation.

What are the revised points under the Corporate Tax Law? Part 3

- Q: From the theoretical and practical viewpoint of international taxation, what are the most important provisions in corporate tax law?
- A: TP (Article 13 newly established).
- R1: The international transactions problems are almost all foreign transactions between parent and subsidiary companies. Countries without detailed tax regulations will have considerable omissions.
- R2: The TP regulations are being actively studied in OECD, BEPS, and important theoretical revisions have been made that will have a major impact on practice, so it will take some time to catch up.
- R3: The TP law alone cannot cope in practice. In Japan, there are a considerable amount of enforcement orders and notices. It takes a lot of time just to maintain and enhance it.

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What are the revised points under the Corporate Tax Law? Part 4

- Q: What is the most important rule for transfer pricing?
- A: TP Documentation provisions (Article 31 Supplementation).
- R1: For parent and subsidiary companies that are already engaged in large-scale and complex international transactions, after the corporate tax inspector enters the tax audit, the corporations to be audited are provided with transaction-related materials and TPM from the perspective of transfer pricing taxation. (Transfer price calculation method: CUP method, etc.) is not enough to investigate.
- R2: Therefore, from the corporation that is involved in the large-scale transaction, a document system is used to report on the country where the parent and child affiliates are located (country report: quantitative data such as tax paid) and business report (master report). Files: Qualitative materials such as policies for intangible assets) and local files (TPM materials, etc.), which are the most important in the investigation, are prepared until the final tax return.

What are the revised points under the Corporate **Tax Law?** Part 5

- Q: Is it necessary to deal with the transfer of unreasonably high interest payments between the parent and subsidiaries only by the capitalization tax?
- A: It is necessary to introduce an excessive interest tax system (newly established in Article 17).
- R1: Insufficient thin capitalization tax (BS method) alone is not enough. Because it may be possible to check the omission of tax due to high interest rate judgment (PL method) based on income
- R2: Excessive interest tax system can be applied to payments from both parents and subsidiaries.
- (Thin capitalization tax system only deals with interest payments from subsidiaries)
- \star However, under thin capitalization tax system it may prevent omission of tax, so the tax system must not be deleted. Japan has both a thin capitalization tax system and an excessive interest tax system.

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What are the revised points under the Corporate Tax Law? Part 6 Big international tax problem in the future: tax haven

Q Tax haven problems assumed.

"A parent company of a Mongolian corporation is trading with a subsidiary in the British Virgin Islands, which purchases products from the Mongolian parent company and exports them to third countries. The father of the president of the Mongolian parent corporation is also a shareholder of the tax-haven subsidiary, and the Mongolian parent company has owed a large amount of debt from this subsidiary, The parent company pays interest to its subsidiary, which has registered an ore mining technology in Mongolia and recently transferred it to its subsidiary, which has been used by the parent company for other foreign companies. It says that the parent company has licensed this technology to another foreign company and has received a license fee. In the near future, the subsidiary will sell its license to a third-country corporation. This subsidiary pays dividends to the parent company"

 \rightarrow Q How can the current Mongolian tax law consider such fictitious assumptions?

Japan's transfer pricing documentation TP's most important areas

Expert Kodera

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Contents

• What is the documentation system?

(1) Documents to be prepared by the multinational group and the deadline for provision

(2) Obligation to create, obtain, and store documents required by corporations that have made foreign-related transactions

What is the documentation system?

• Based on the BEPS project action 13, the document creators who are required to prepare in the Japanese TP documentation system established by the tax reform in 2016,

(1) "Documents that multinational corporate groups are required to create"

(2) "Documents required by corporations that have made foreign-related transactions"

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(1) Documents to be prepared by the multinational group and the deadline for provision

A. Notification items for the final parent company, etc. Offer period: The date when the last parent fiscal year ends

B. Country by country reports

Offer period: Within one year from the day after the end of the last parent fiscal year

C. Business Overview Report Items Offer period: within one year from the day after the end of the last parent fiscal year

(2) Obligation to create, obtain, and store documents required by corporations that have made foreignrelated transactions

A) Documents deemed necessary to calculate arm's length price Documents prescribed in each item of Rule 22-10 of the Previous Measures Law 22

However, in the 2016 tax reform, items to be described have been clarified and items have been added in accordance with the recommendations of the BEPS project.

B) Simultaneous documentation

For corporations with a certain foreign-related business scale,

obligation to prepare or obtain and save the documents by the deadline for filing a final tax return.

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Judgment of the obligation to provide documents prepared by a multinational company group Reporting Entity

- Judgment order
- ① Being a "corporate group"
- ② Being a "multinational company group"
- ③ Applicable to "Specific Multinational Corporate Group"
- ④ Applicable to "Component company".

What is the Enterprise groups?

• The following applies:

A. Among the corporate groups, those for which consolidated financial statements are prepared for the corporate group, excluding the following groups:

- (A) The group of companies in which the status of the property and profit and loss of the controlling company in the group of companies is described in the consolidated financial statements of other group of companies.
- (B) If the assets and profit / loss status of the controlling company in the corporate group are listed on the financial instruments exchange, the shares of the controlling company in the other corporate group will be consolidated into the consolidated financial statements.

B. If the shares of the controlling company in the corporate group are listed on financial instruments exchanges, consolidated financial statements will be prepared, excluding the following groups.

- (A) When the assets and profits and losses of the controlling company in the corporate group are described in the consolidated financial statements of other corporate groups, the corporate group
- (B) If the status of the assets and profits and losses of the controlling company in the corporate group are to be listed on financial instruments exchanges, etc., the consolidated financial statements will be prepared. The group of companies when they are described in consolidation.

Multinational Entity Group (MNE group)

The followings are applies:

- A) Companies in which the members of the corporate group, live in two or more countries
- (B) Business conducted through a permanent facility pertaining to any member company of the group located in a country or region other than the country of residence where all member companies of the company group have the same country of residence Income from business conducted through the permanent establishment, which has a corporate tax or a tax equivalent to a corporate tax imposed in a country or region other than the country of residence.

Specified MNE Group

- The specified multinational company corresponds to a multinational company group having a total income of 100 billion yen or more in the immediately preceding last parent fiscal year.
- The total amount of income is the sum of the amount of sales, the amount of income, and other income in the consolidated financial statements of the multinational corporate group. Consolidated by interest income and interest on securities, dividend income, gain on sale of securities, gain on foreign exchange gain, reversal of allowances, equity in earnings of affiliates, gain on sales of fixed assets, gain on negative goodwill, etc. It is stated that all revenues reported in the financial statements are included.

Constituent Entity Part 1

- The following applies:
- A. When consolidated financial statements have been prepared for the corporate group
- (A)Companies whose assets and profits and losses are consolidated and described in the consolidated financial statements of the corporate group
- (B) In the consolidated financial statements of the corporate group, of the companies, excluded from the scope of consolidation due to immateriality, in which the majority of the voting rights are owned by another company, etc. of the group, and the decision-making body is controlled by other reasons

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Constituent Entity Part 2

• The following applies:

A . When the consolidated financial statements of the corporate group have not been prepared

- (A) A company, whose assets and profits and losses are stated in the consolidated financial statements that would be prepared if the shares, of the controlling company, in the corporate group are listed on financial instruments exchanges,
- (B) Companies that are excluded from the scope of consolidation due to lack of significance in the consolidated financial statements that would be prepared if the shares of the controlling company in the corporate group were to be listed on financial instruments exchanges, in which the majority of the voting rights are owned by another company, etc. of the group, and the decision-making body is controlled by other reasons

Ultimate Parent Entity

• The ultimate parent company is a member company of a corporate group, that owns a majority of voting rights of other members of the corporate group in its own calculation, or other reasons, which governs the body that determines the financial and operating or business policies and has no parent company.

Final parent company notification items 1

• (1) Outline: A document that contains information on the final parent company and the proxy parent company, etc.

[Provider]

A domestic corporation that is a member of a specific multinational group or a corporation that has a permanent facility (PE)

[Notification matters]

Name of the final parent company and the name of the proxy parent company, the location of the head office or main office

[Offer period] Provided by e-tax to the head of the responsible tax office by the end of the last parent fiscal year

Final parent company notification items 2

- [Notification format]
- Provision of the final parent company notification items and the final parent company notification items, country-specific report items, and business overview report items for the specified multinational enterprise group.
- [Start application]Last fiscal year beginning on or after April 1, 2016

Final parent company notification items 3

- (2) Description
- For the final parent company notification items and matters pertaining to special provisions, the information described in the final parent company notification form is submitted by e-tax.

(1) Overview: A document that contains information on the amount of income, the amount of profit before tax, the amount of tax paid, and other items for each country and region of the multinational corporate group.

[Provider]

- Treaty method: Domestic corporation that is a member company of a specific multinational company group
- Subsidiary method: A domestic corporation that is a member of a specified multinational group, or a corporation that has a permanent establishment (PE)
- (Excluding final parent company or proxy parent company)

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Country-by- country reporting items # 2

- [Report items]
- For each country or region where the business of a member company of a specific multinational corporate group is conducted

(1)Amount of income, amount of profit before tax, amount of tax paid, amount of tax incurred, amount of capital or equity, amount of retained earnings, number of employees and amount of tangible assets

(2) The name of the component company, the name of the country where the head office is located and the main business of the component company, if the country of residence and the country of the head office are different.

(3) References

• [Submission period] Provided by e-tax to the head of the responsible tax office within one year from the day after the end of the last fiscal year

- [Report format]
- Country-by country Reporting Items for Specific Multinational Enterprise Groups, Tables 1-3
- [Language] English
- [Penalty]
- A fine of 300,000 yen or less for failing to provide country-specific reports within the time limit without a justifiable reason
- [Start submission]
- Last parent fiscal year beginning on or after April 1, 2016

Country-by- country reporting items #3

• ③When the final parent company or proxy parent company are located in foreign countries

(principle)

• If the final parent company or the proxy parent company is located in a foreign country, the CbCR provided by the final parent company or the proxy parent company to the tax authority in the country of residence is provided from the foreign tax authority to the Japanese tax authority. In principle, there is no obligation to provide national newsletters for domestic corporations or foreign corporations with PEs in Japan that are members of specific multinational corporate groups.

- ③When the ultimate parent company or proxy parent company is located in a foreign country
- (exception)
- However, when the Japanese tax authorities are deemed to be unable to obtain CbCR from the foreign tax authorities in the following cases (a), (b) and (c), the above-mentioned subsidiary method will be adopted.In other words, a domestic corporation or a foreign corporation with a PE in Japan that is a member of a specified multinational corporate group,must submit its country-by country reporting items by e-tax within one year from the day after the end of the last fiscal year.

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Country-by- country reporting items # 5

- A) When the necessary measures to request the provision of CbCR for the final parent fiscal year have not been taken in the country of residence of the final parent company or proxy parent company.
- B) When there is no agreement between competent authorities between the Minister of Finance and the competent authority of the country of residence, such as the ultimate parent company.
- C) At the end of the last parent fiscal year, if the country of residence of the last parent company or proxy parent company is designated by the Secretary of State as the country / region deemed to be unable to provide CbCR to Japan.

• Information exchange system and obligation to provide country-by country reports

(Principle)

• The CbCR provided to the foreign tax authorities by the final parent company or agent parent company located in a foreign country is, in principle, provided to the Japanese tax authorities (chief of the responsible tax office) by an information exchange system based on a tax treaty with Japan.Therefore, the domestic corporations and branches of the foreignspecified multinational corporation group are not obligated to provide country-specific reporting matters in Japan.

(Exceptions)

• However, the above exceptions a), b) and c) indicate that the Japanese tax authorities cannot receive CbCR from foreign tax authorities through the information exchange system based on tax treaties, domestic corporations and branches are obliged to provide country-specific reports in Japan.

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Country-by- country reporting items # 6

- When the final parent company in Japan designates a foreign corporation as a proxy parent company, or when using voluntary filing
- (Principle)
- As described above, in principle, the country-by country reports provided by the ultimate parent company of Japan to the Japanese tax authorities are based on the information exchange system based on the tax treaties and the like concluded by the tax authorities of the countries in which the constituent companies reside.
- (Treaty system).
- Therefore, it is not necessary for a foreign component company to provide its CbCR to the tax authorities of its country of residence.

• When the final parent company in Japan designates a foreign corporation as a proxy parent company, or when using voluntary filing

(exception)

• However, for foreign constituents that fall under the following cases, the Japanese tax authorities do not provide country-by-country reporting matters to the tax authorities of the countries where the constituents are located. May need to provide CbCR to its foreign tax authorities (subsidiary method).

A) Foreign companies of a specified multinational corporate group, located in a country where the provision of CbCR for the relevant fiscal year is obligated by the laws of the country where the country is located.

B) CbCR with the Japanese tax authorities Foreign companies located in countries that are deemed unable to exchange information

Curriculum of Advanced International Taxation training

2018/8/27-2018/8/31

	8/27/2018	8/28/2018	8/29/2018	8/30/2018	8/31/2018
	Mon	Tue	Wed	Thu	Fri
(9:00-12:00)	Pre-test Tax reform of Mongolian international taxation	Transfer pricing case study	Transfer pricing case study	Transfer pricing case study	Transfer pricing case study
	Kodera	Tajino and Ishiguro	Tajino and Ishiguro	Tajino and Ishiguro	Tajino and Ishiguro
(13:00-16:00)	Intangible assets and TPM (Transfer Pricing Methods)	Transfer pricing case study	Transfer pricing case study	Transfer pricing case study	Summary discussion Post-test
	Kodera	Tajino and Ishiguro	Tajino and Ishiguro	Tajino and Ishiguro	Kodera, Tajino Ishiguro

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3	N.Jargaltsetseg	Tax inspector, Taxpayer Relations Department, GDT
4	J.Tserentsoo	Tax inspector, Taxpayer Relations Department, GDT
5	A.Suvdaa	Tax inspector, Taxpayer Relations Department, GDT
6	G.Enkhjin	Tax inspector, Tax Revenue Department, GDT
7	Ts.Bayarmaa	Tax inspector, Internal Audit Department, GDT
8	B.Ariunchimeg	Tax inspector, Tax Administration and Cooperation Department, GDT
9	N.Tuul	Tax inspector, Training Center, GDT
10	Sh.Undraa	Tax inspector, Training Center, GDT
11	Ts.Tuvshinbayar	Tax inspector, Tax Revenue Division, SBRAD
12	B.Batchimeg	Tax inspector, Taxpayer Relations Department, GDT
13	S.Gunjinlkham	Tax inspector, Taxpayer Relations Department, GDT
14	D.Batjargal	Senior tax inspector, Tax Audit and Methodology Division, SBRAD
15	S.Tugsjargal	Senior tax inspector, Mining and International Taxation Division, SBRAD
16	Ts.Delgermaa	Tax inspector, Mining and International Taxation Division, SBRAD
17	G.Byambasuren	Tax inspector, Mining and International Taxation Division, SBRAD
18	P.Otgonsuren	Tax inspector, Tax Audit and Methodology Division, SBRAD
19	N.Bolorchimeg	Tax inspector, Tax Audit and Methodology Division, SBRAD
20	N.Munkhdavaa	Tax inspector, Tax Audit and Methodology Division, SBRAD
21	N.Khandkhuu	Tax inspector, Tax Audit and Methodology Division, SBRAD

22	Ts.Ishjamts	Tax inspector, Tax Audit and Methodology Division, SBRAD
23	B.Tugsjargal	Tax inspector, Tax Audit and Methodology Division, SBRAD
24	Sh.Enkhjargal	Tax inspector, Tax Audit and Methodology Division, SBRAD
25	Yo.Munkhbat	Tax inspector, Taxpayer Relation Division, SBRAD
26	Sh.Batzaya	Tax inspector, Taxpayer Relation Division, SBRAD
27	B.Urantsetseg	Tax inspector, Risk and Statistics Division, SBRAD
28	G.Banzragch	Tax inspector, Tax Revenue Division, SBRAD
29	Kh.Altankhuu	Tax inspector, Administration Division, SBRAD
30	O.Tsend-Ayush	Tax inspector, Tax Audit and Methodology Division, Capital City Tax Office
31	J.Erdeneburen	Tax inspector, Administration Division, Capital City Tax Office
32	B.Khaliun	Tax inspector, Taxpayer Relation Division, LTO
33	Ch.Lkhamragchaa	Tax inspector, Chingeltei District Tax Office
34	D.Solongo	Tax inspector, Sukhbaatar District Tax Office
35	Ts.Undarmaa	Tax inspector, Songinokhairkhan District Tax Office
36	J.Uyanga	Tax inspector, Tax Administration and Cooperation Department, GDT
37	S.Naranbaatar	Tax inspector, Dornod Province Tax Office
38	Ts.Unurmunkh	Tax inspector, Orkhon Province Tax Office
39	S.Duubayar	Tax inspector, Umnugovi Province Tax Office
40	L.Munkhtuul	Tax inspector, Legal affairs division, GDT

Intangible assets and TPM (assuming BEPS discussion) August 27, 2018

JICA Expert

Toshinari Kodera

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Contents

• A TPM

- B BEPS discussion and intangible assets
- C OECD TP guideline and intangible assets
- D Intangible assets in Japanese TP cases and rulings

A TPM

- Q Can you explain TPM verbally?
- Japanese TPM system
- Calculation formula of residual profit division method

Q Please briefly explain verbally without looking at the following TPM.

3

4

• Basic 3 methods CUP, RP, CP

• Other methods

PS (comparison PS, contribution PS, RPSM)

TNMM (Berry ratio method, operating profit margin method & total operating profit margin method)

 \star The calculation method is attached to the attached sheet based on the calculation examples in the casebook.

Japanese TPM system

(1)TPM applied to inventory transactions
Group A (basic)
★ CUP method, RP method, CP method, PS method, TNMM
Group B (combining the laws, and using market prices, etc., as comparative transactions instead of actual comparative transactions)
★ CUP method, RP method, CP method, PS method, and a method based on TNMM.
(2)TPM applied to transactions other than inventory
GroupC (service provision, licensing transactions for intangible assets, etc.)
★ CUP method, RP method, CP method, PS method, method equivalent to TNMM
GroupD (combining each equivalent method)
★ A method equivalent to CUP, RP, CP, PS, and TNMM.

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Calculation formula of residual profit split method

Calculation of basic (operating) profit [Calculation of basic profit of P parent company] [Calculation of basic profit of S subsidiary]

Proportional calculation of residual profit by split factor

Q What is the calculation of basic profit?

Q What is basic profit?

Profit normally obtained in unrelated transactions that do not have significant intangible assets

Q What is the calculation of basic profit?

For example,(1) Run a business of the same type as that of the foreignrelated business (2)Calculated based on the profit level index that indicates the ratio of operating profit to business assets or sales of corporations (excluding corporations with significant intangible assets) with similar markets and business scales.

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Q What is the profit level indicator (PLI) often used in TNMM and RPSM?

1) Operating income ratio to sales

= Operating income \div Sales \rightarrow Suitable for sales companies whose business activities are reflected in PL SG & A expenses.

2) Gross profit margin on operating expenses (compared to berry)

= Gross profit \div Operating expenses (Sales and administrative expenses) \square Suitable for trading companies.

3) Return on operating assets (ROA)

= Operating income \div Operating assets \rightarrow Suitable for capital-intensive manufacturing companies that are equipment industries.

4) Operating income ratio to total cost (Net Cost Plus)

= Operating income ÷ [Cost + SG & A expenses]	→ Suitable for labor-intensive manufacturing
companies or service provider companies.	

Q: Calculation of arm's length price when there are multiple comparable companies

Administrative Procedure 3-5

Principle: Average value of the comparable profit margin

Exception: median, etc.

Condition: When another reasonable value according to the distribution situation of the comparable profit margin is recognized.

* The median is, for example, the second quartile in the quartile method.

Calculation of parent company's basic profit

• P Parent company Sales 400

Operating profit 40

Operating margin 0.1 (10%)

Statistically reasonable operating margins of several third-party companies located in the same country as the P parent company and free of significant intangible assets

Third-party operating margin 0.0625 (6.25%)

★ P parent company's basic profit = P parent company's sales x third party operating margin= $400 \times 0.0625 = 25$

Calculation of basic profit of S subsidiary

S subsidiary Sales

s 300

Operating income 60

Operating margin 0.2 (20%)

Statistically reasonable operating margins of several third-party corporations located in the same country as the S subsidiary and excluding significant intangible assets

Third-party operating margin 0.05 (5%)

★ Basic profit of S subsidiary = Sales of S subsidiary × Third-party operating margin= $300 \times 0.05 = 15$

Calculation of residual profit

- Calculation of residual profit
- P & S's combined operating income 40 + 60 = 100
- P & S's basic profit = 25 + 15 = 40
- Remaining profit = 100-40 = 60

Split calculation of residual profit using R & D expenses as a split factor

P Parent company R & D expenses 40 R & D expenses of S subsidiary 20 Composition ratio 40: 20 = 2: 1 Residual profit of P parent company = Total residual profit $60 \times 2 / [2 + 1] = 40$ S subsidiary's residual profit = total residual profit $60 \ge 1 / [2 + 1] = 20$

Final (operating) profit that P & S should have

- P parent company = basic profit 25 + residual profit 40 = 65
- S subsidiary. = Basic profit 15 + Residual profit 20 = 355
- Transferable taxable income
- P Parent company= Initial operating profit 40 (taxed) + TP taxable income 25 (= 65-40) = 65
- S subsidiary= Initial operating profit 60 (taxed)-TP reduced reimbursement income 25 = 35

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B BEPS discussion and intangible assets

Recommendations on BEPS Action 8 (Transfer Pricing Rules for Intangible Assets)

- 1. Definition of the intangible assets
- 2. Regarding the attribution of intangible asset returns
- 3. About TPM

Reasons for recommending intangible assets and TP rules

- Each intangible asset such as intellectual property is unique
- Many intra-group transactions
- In many cases there is no comparable arm's length transaction
- As a result, it is difficult to calculate the appropriate price
- As a result, there were multinational corporations that transferred intangible assets to affiliates with no economic substance in lightly taxable countries at a lower price and made significant profits there to save tax.

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Definition of intangible property

- The BEPS final report adopted a wide range of concepts.Intangible assets are listed as "exemplary".
- Definition: What is an intangible asset?
- 1. It is not a tangible or financial asset,
- 2. Can be owned and managed for commercial purposes,
- 3. Assets paid for when used or transferred in comparable arm's length transactions

Examples of intangible assets

- Patent
- Know-how
- Trade secrets
- Trademark
- Trade name brand
- Contractual rights etc.

Attribution of returns on intangible assets

- Each company receives returns based on the value created by developing, improving, maintaining, protecting and using intangible assets.
- Development
- Enhancement
- Maintenance
- Protection
- Use (Exploitation)
- It is called DEMPE.
- In other words, a multinational group member company does not necessarily receive a share of revenue derived from intangible assets merely by having legal ownership.

Price calculation method for intangible assets

• If a reliable comparable transaction cannot be identified for the transfer of intangible assets between related parties, the method of calculating the transfer price is as follows:

 \rightarrow The "Valuation Technique" has been made available.

Specifically, DCF method (Discounted Cash Flow)

This is the transfer price of the intangible asset, with the future cash flow generated from the intangible asset discounted to the present value.

For intangible assets that are difficult to evaluate, the "income suitability standard" will be applied.

DCF method

- How to make corporate value based on profits (future free cash flow) generated by companies
- Specifically, the free cash flow is discounted by an index called a discount rate, and the present value is set as the business value.

What is the Income Compatibility Standard?

- It has entered Chapter 6 of the OECD Guidelines.
- It has already been adopted in the United States and Germany.
- For intangible assets that are difficult to accurately evaluate at the time of the transaction, there is a significant difference between the prior forecast and the subsequent performance. For example, although the intellectual property rights were transferred to a subsidiary for 800,000 yen, the original value might have been 10 million yen?
- The problem, which regarding such problems, "the theory of estimating the prior prediction based on the ex-post results" is the income suitability criterion. $_{\circ}$

Q: Do Income Compatibility Standards Contradict the Principles of an Independent Company?

- BEPS Final report
- Conclusion: not contradict.
- Reason: Regarding intangible assets that are difficult to evaluate between independent companies, even if the initial transfer price is conservatively estimated and set low, depending on the subsequent results, such as successful commercialization, the initial transfer is conceivable to renegotiate the price or take an action to make an additional payment to the transferor linked to the sales at the transferee.
- If so, if there is a company that has completed a single transaction with a low transfer of an intangible asset that is difficult to value, it will not be possible to read back the original transfer price as if it had been renegotiated. It does not violate the arm's length principle, even if based on the ex post facto results.

Q What is tax intangible assets in Japan?

Corporate Tax Law Enforcement Ordinance Article 13-8

There are list on it the mining rights, fishing rights, dam use rights, water rights, patent rights, utility model rights, design rights, trademark rights, software, breeder rights, operating rights for public facilities, etc. They are listed.

Basic Notification of the Measures Law 66-4 (3) -3 (Note) 1

Intangible assets used by sellers or buyers (Something has value such as copyrights, industrial property rights stipulated in the Basic Circular 20-1-21, important customer lists, sales networks, etc.) ...

Corporate Tax Law Basic Circular 20-1-21

Industrial trends, sales and other statistical data, analytical appraisal services, etc. do not become intangible assets.

C OECD Transfer Pricing Guidelines and Intangible Assets

OECD Transfer Pricing Guidelines New Chapter 6

- New Chapter 6 provides for the use of valuation techniques and transfer pricing rules for hard-to-valuate intangible assets as a new method of calculating arm's length prices for intangible asset transactions.
- ① Use of valuation technique (Using DCF method)
- ②Intangible assets that are difficult to evaluate (Commensurate with income standard) (Use of Income Compatibility Standard)

Use of valuation technique

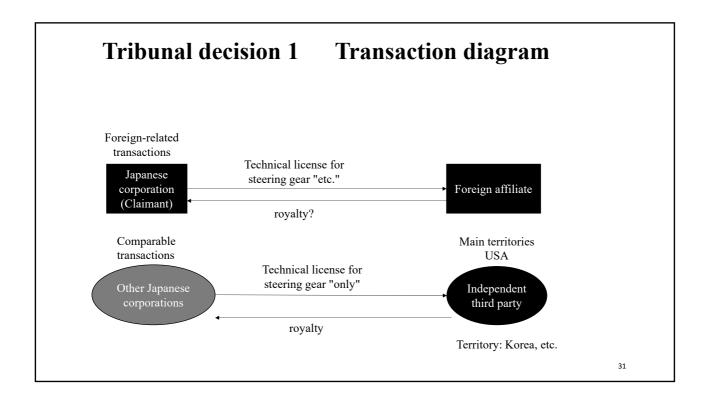
• OECD Transfer Pricing Guidelines New Chapter 6 D2.6.3"The use of income based on valuation techniques, in particular, the calculation of future income trends or cash flow discounted present values expected to result from the use of the intangible asset being valued. Is particularly useful when used properly. "

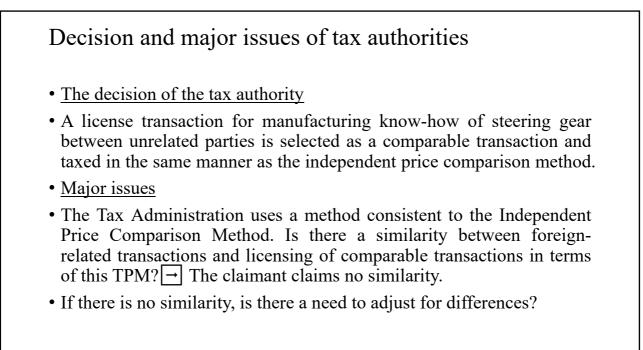
About intangible assets that are difficult to evaluate

- New Chapter 6 (New Para 6.185)"If an army in a comparable situation seems to agree on a mechanism to address the high uncertainty in the valuation of intangible assets (for example, introducing a price adjustment clause), it should be acceptable to price transactions on intangibles or intangible rights based on such mechanisms.
- Similarly, if an independent company is in a comparable situation, and the subsequent event is extremely fundamental, and the occurrence is expected to lead to a future renegotiation of the transaction price, such an event should result in a modification of the pricing of related party transactions."

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D Intangible assets in Japanese TP rulings/cases





Trial finding and judgment (related to license transaction)

- Regarding the target technology, the overseas related transactions are steering gears, steering columns, and water pumps, and the comparable transactions are only steering gear, but the royalty rate is 3% of sales.
- Regarding territories, foreign-related transactions and comparable transactions are different, such as the United States and South Korea, respectively. However, out of about 200 U.S. auto parts industry's data, the royalty rate of 40% is 3% of sales, In Korea, 60% was also 3%.
- Regarding the date of signing the contract, foreign-related transactions were conducted in November 1989, and comparable transactions were conducted in December 1990. Including the period before and after that, most of the royalty rates in the auto parts industry were 3%.

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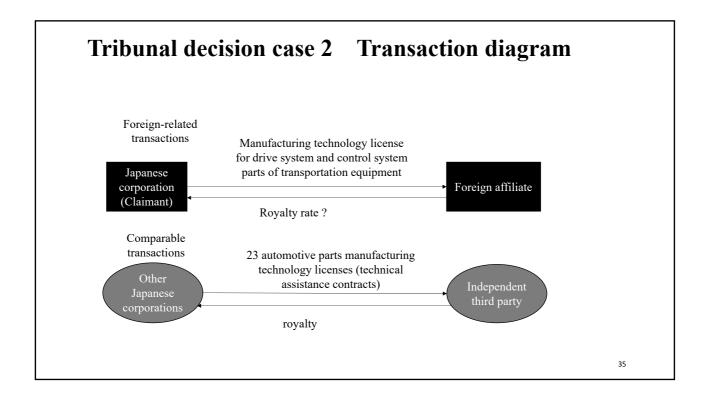
Tribunal conclusions and reasons

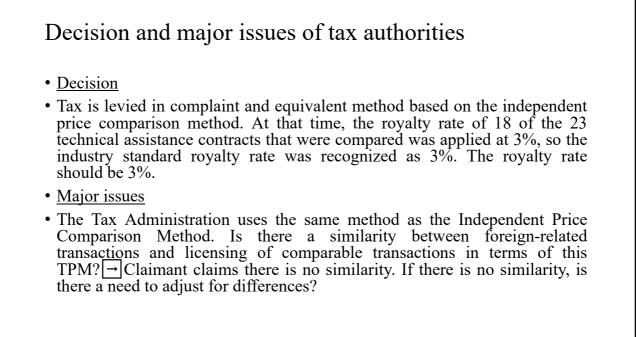
• Conclusion

There are similarities between foreign-related transactions and comparable transactions.

No difference adjustment required.

• What was the reason?





\star A method equivalent to the method based on the independent price comparison method

• Tribunal interpretation

• "It is understood that this is a method of estimating arm's length prices by selecting comparable transactions by expanding their scope and inferring from similar intangible asset transactions."

Trial finding and judgment (related to license transaction)

- The rate of 3% is only 18 out of 23 transactions for comparison.
- The technical information provided by the claimant to the foreign party for the manufacture of parts differs from that of the comparable transaction. The types of foreign-related transactions and comparable transactions are different.
- From the above, the reason that the rate is 3% is insufficient.
- However, all the comparable transactions selected by the Tax authority are more than 2%. In addition, the transport equipment for foreign-related transactions and comparable transactions also have the same functions as drive system components and control system components.

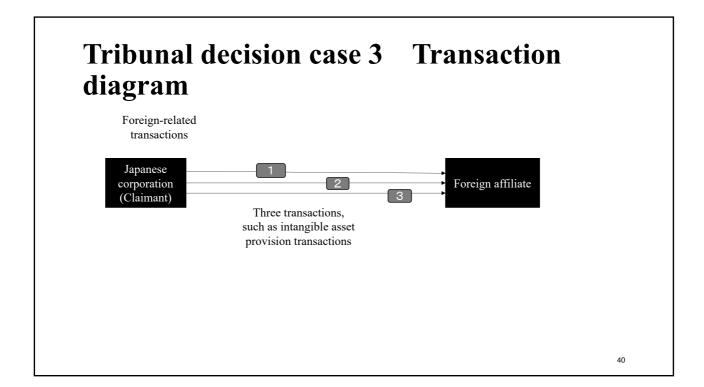
Tribunal conclusions and reasons

Conclusion

There are similarities in comparable transactions for foreign-related transactions. No difference adjustment is required. Royalty rate is 2% OK.

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• Reason?



Decision and major issues of tax authorities

Decision

- Taxes on transactions such as manufacturing and sales of electronic components and provision of intangible assets under the residual profit split method
- <u>Major issues</u>
- ① Is TP tax unnecessary because dividends are received from foreign parties?
- \rightarrow Claimant claims that TP tax is not required.
- 2 Isn't it a "one deal" that can use the three basic methods, such as CUP, RP, and CP?
- \rightarrow The claimant claims that it is a "one transaction."
- ③ Isn't the residual profit division method used for each transaction unit?
- \rightarrow The claimant insists on applying the residual profit split method for each transaction unit.
- 4 Is the selection of a comparable company in the calculation of basic profit appropriate?
- \rightarrow The claimant argued that there were some errors in selecting the comparable company.

⁽⁵⁾While R & D expenses were borne by foreign parties, why should it be used as an index for splitting claimants?

 \neg The claimant argued that the costs incurred by the foreign-related party should be used as an index for dividing the foreign-related party.

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Trial fact finding and judgment # 1

- (1) In Japan's TP tax system, there is no provision that the TP tax system will not be applied if there is a dividend from foreign parties.
- (2) It is not a "one transaction" that can use the three basic methods and equivalent methods.
- (3) The claimant and the foreign party each have significant intangible assets and these three transactions are related. Therefore, the method is suitable for the residual profit split method for the entire related transaction based on the total of the operating profits of the claimant and the foreign related party.

Trial fact finding and judgment #2

④ Compared companies when calculating basic profit

"It is necessary to select a company that does not have significant intangible assets from companies that operate similar businesses and have similar markets and business scales as comparable companies."

Companies that should be excluded from comparison are: 1) the financial statements have fluctuated significantly, and 2) the company has a short-term profit or loss.

Trial fact finding and judgment #3

- ⑤ Criteria for determining intangible assets owned by both foreign parties
- 1) Not just legal ownership.
- 2) Consider the contributions of related parties in intangible asset formation activities.
- 3) The functions performed by the related parties are comprehensively considered in the decision-making of intangible assets, provision of services, cost sharing, and risk management.
- 4) Foreign stakeholders participate in formulating research themes and bear the risks involved in R & D.
- 5) Therefore, the R & D incurred by the foreign-related party is a splitting index of the foreign-related party, not the claimant Japanese corporation.

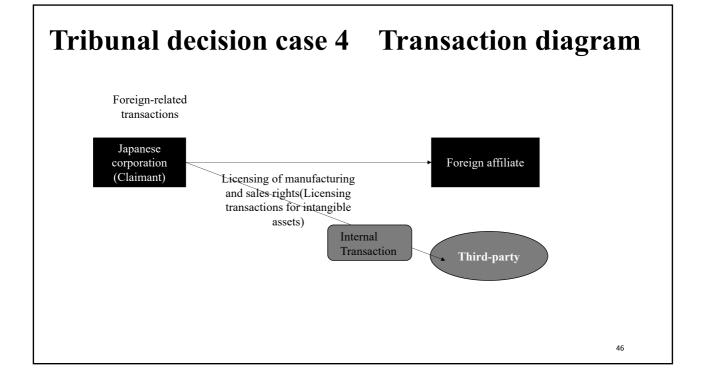
Tribunal conclusions and reasons

Conclusion

There is no illegality in the taxation of the Revenue Dividend Act of the Tax Service. The R & D expenses incurred by foreign parties are not a factor in splitting the claimant.

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• Reason?



Decision and major issues of tax authorities

• Decision of tax authoriry

- Tax on manufacturing and sales rights licensing transactions (licensing transactions of intangible assets) using the residual profit split method
- Major issues
- What is the splitting factor of the Residual profit split method?

Trial finding and judgment

- (1) The claimant insists on the application of the "method equivalent to the standalone price comparison method" with the internal transaction as the comparable transaction.
- (2) Indeed, intangible assets in licensing transactions for internal transactions and foreign-related transactions are the same
- (3) However, the conditions for licensing are different. That is, 1) license start time,
 2) license period, 3) license condition of exclusive license, 4) presence / absence of dispatch of technician accompanying license, and 5) licensed sales area.
 Both contractually and in reality.
- (4) These affect the arm's length price ALP (royalty fee).
- (5) The claimant has not proven that these have no effect on ALP.
- (6) The so-called "excessive labor cost" (= annual labor cost-average labor cost of the related manufacturing industry) of the person in charge of the intangible asset formation division as a factor in the splitting of the Tax Service is reasonable.

Tribunal conclusions and reasons

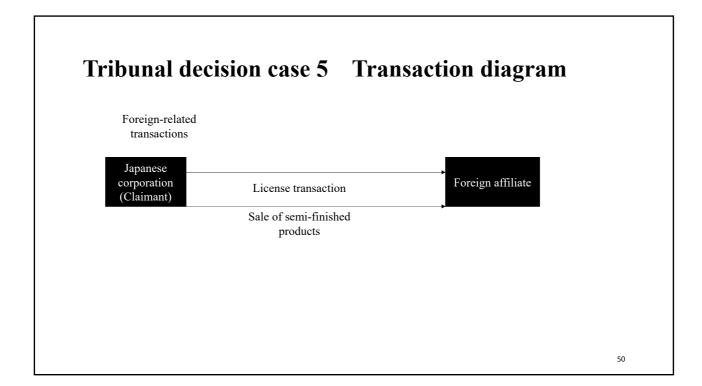
Conclusion

There is no illegality in the taxation of the Revenue Dividend Act of the Tax Service.

The internal transaction claimed by the claimant cannot be a comparable transaction.

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• Reason?



Decision and major issues of tax authorities

• Decision of the tax authority

- Tax on licensing transactions and sales of semi-finished products by the residual profit split method
- Major issues
- (1) Should license transactions and semi-finished product sales transactions be treated as separate transactions? → Taxpayers argue that this should be a separate transaction.
- (2) Should a method equivalent to the independent price comparison method be applied? → Taxpayers claim this method.
- (3) Should the residual profit split method be applied?

Trial fact finding and judgment #1

- (1) Semi-finished products include some of the know-how related to the production of licensed products. The licensee is obliged to purchase the semi-finished product from the claimant. Therefore, it can be said that in the semi-finished product transaction, the consideration for licensing of intangible assets is collected, so the licensing transaction and the semi-finished product sales transaction are integrated and the ALP calculation is OK.
- (2) In license transactions and semi-finished product sales transactions, 1) intangible assets are of the same type, but 2) license patents and the scope of "technical information" differ, 3) licensed products differ in composition, 4) sales status, Market conditions are different. Thus, there is no similarity between the two transactions.⇒ Then, the method equivalent to the independent price comparison method cannot be applied.

Trial fact finding and judgment #2

(3) Selection of transactions for comparison in calculating basic profit

Claimant: Although foreign parties do not require sophisticated and large-scale equipment, the Tax Service has selected large-scale equipment corporations and companies with different products to be compared by the SIC code.

Tribunal:

- 1) The SIC code selected by the Tax Service is not unreasonable.
- 2) Since the residual profit split method uses the operating profit margin, it is less susceptible to (product) differences in transactions than the gross profit margin.

Trial fact finding and judgment #3

(4) Regarding the split factor of the residual profit splitting method Part1

Claimant: The overseas affiliate has a "Sales Department" which is a 24-hour business support team, which greatly contributes to the formation of intangible assets.

Tribunal: The activities of the sales department are auxiliary.

(5) Factors of the residual profit splitting method Part 2

Tax Agency: The cost of the legal department of the claimant is also a factor.

Tribunal: The costs of the Legal Department include the costs of dealing with unrelated parties, which should be deducted from the cost of the splitting factor.

Tribunal conclusions and reasons

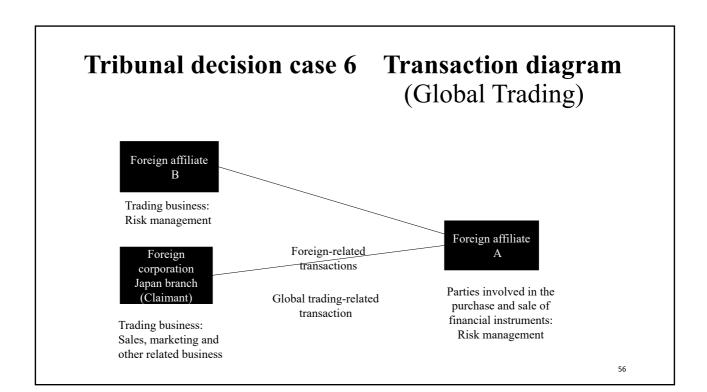
Conclusion

There is no illegality in the taxation using Residual Profit Split Method of the Tax authority.

However, there are some errors in the splitting factors of the Taxation Agency, so the original decision will be canceled only for those parts.

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• Reason ?



Decision and major issues of tax authorities

Decision

• Tax on global trading using residual profit split method

• Major issues

- 1. Is it possible to apply a method equivalent to the three basic methods or a method complaint thereto?
- 2. Is the residual profit split method applicable?

Trial fact finding and judgment

- (1) Since a comparable transaction could not be found, a method equivalent to the Basic 3 Method and a method equivalent to the Basic 3 Method cannot be applied as the TPM.
- (2) In the Transaction, the basic profit in the primary profit distribution is the business that is deemed to contribute less to profits than the trading and risk management businesses.

It is 1) trading business and 2) risk management business that provide the residual profit as the second profit distribution.

Tribunal conclusions and reasons

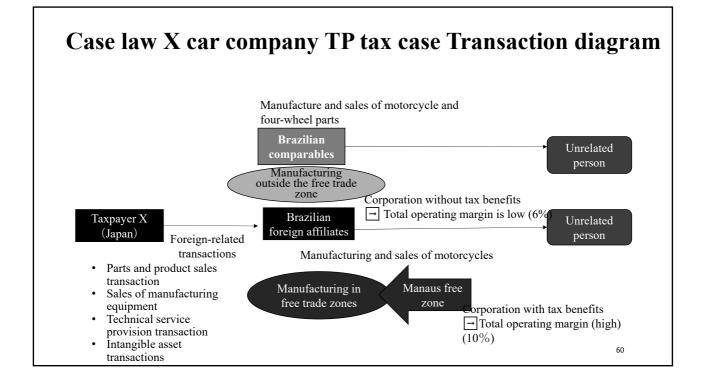
Conclision

(3) There is no illegality in the taxation using residual profit split method of the Tax authority.

(4) Trader labor costs and capital procurement costs are factored into the factors.

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• Reason?



Decision and major issues of tax authorities

• Decision of the Tax authority

Tax on motorcycle inventory-related transactions, which are inventories, using the residual profit split method. Of this TPM, the "gross operating profit margin method" was used, where the median gross operating profit ratio of the selected comparable transaction was the Brazilian basic profit margin.

This basic rate of return multiplied by [total cost of foreign-related party-cost that is a measure of the value of significant intangible assets spent by foreign-related party] = basic benefit of foreign-related party in Brazil.

- Major issues
- (1) Are the multiple transactions "one (one) transaction"?
- (2) Is the application of the residual profit split method a violation of tax legalism?
- (3) Comparison between overseas affiliates and comparable companies in basic profit calculation. Is there a possibility? →(3) is the most important issue! !!

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Q How many transactions are eligible for TPM?

There are the following 4 transactions:

- (1) Sale of motorcycle and automobile parts and products
- (2) Sales transactions of manufacturing equipment, etc.
- (3) Technical service provision transaction (technical guidance service provision transaction in which the plaintiff dispatched a technician to a factory of an overseas affiliate)
- (4) Intangible asset transaction (license of trademark, etc. of plaintiff)

 \rightarrow The Tax authority has imposed a "one-piece transaction" with them by applying the residual profit split method using the gross operating margin.

Q: Is the process of selecting the comparable company outside the Manaus area appropriate for the calculation of basic profits?

- (1) A corporation that conducts the same kind of business as an overseas affiliate and has a similar market, business scale, etc. and has no significant intangible assets
- (2) Of the Brazilian companies listed on the commercial database BUREAU VAN DIJK "OSIRIS", MERGENT "MERGENT ONLINE" and LexisNexis Japan Co., Ltd. "LexisNexis", the US SIC code is 3713, 3714, and Excludes companies that meet the following six conditions from those that manufacture motorcycles, automobiles and related products that are 3751.
- 1) Companies with 50% or more of business not related to motorcycles or automobiles
- 2) Companies with annual sales of \$ 25 million or less
- 3) Companies that cannot obtain financial information for more than three consecutive years
- 4) Companies with sales of 50% or more related to aftermarket products such as repairs
- 5) Companies whose transactions with affiliated companies account for 50% or more of sales or total expenses
- 6) 6) There is a problem with continuity because the operating margin is negative and the debt is in excess.

Q: Isn't the profit of the Manaus tax benefit a residual profit?

Tax authority

- Manaus' tax benefit is integral to the significant intangible assets of taxpayers and foreign affiliates.
- Therefore, the Manaus tax benefit is the residual profit and is divided by the intangible asset factor.

Court

However, in order to obtain tax exemption approval in the Manaus region, it is sufficient to simply satisfy the manufacturing process standards, and even corporations without significant intangible assets can operate in the Manaus region. Thus, the Manaus tax benefit is not a significant intangible asset and therefore not a residual profit. Rather, it must be considered at the stage of calculating basic benefits. → If the foreign party has Manaus tax benefit, the comparable company should also have Manaus tax benefit.

Q: What are the important intangible assets of taxpayers and foreign affiliate?

• Court

- (1) Technical information on the manufacture and sale of motorcycles, 1) know-how on establishing a mass production system, including a network of parts and manufacturing equipment suppliers, and reforming the production system, 2) using the information provided to the plaintiffs' foreign parties There is an intangible asset relating to the market such as the trademark, brand, etc. of the plaintiff who has been licensed.
- (2) Foreign affiliates also have their own technology and know-how created by conducting their business activities based on their own technical information and know-how provided by the plaintiff.
- (3) In addition, a group of foreign related parties, gathering the number of people, forming a group to buy a car, making a group and paying the number of times, paying a car from the group monthly, and hitting the car unique sales network called consolcio sales, where customers receive and pay until the payment is over.

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Q: What is the split factor cost of the residual profit?

• Court

1 <u>plaintiff</u>

Cost of forming intangible assets for markets such as technical information, know-how, trademarks, brands, etc.

→R&D expense

②Foreign affiliates

Unique technology and know-how

➡R&D expense

③Foreign affiliates

Unique sales network called consolcio sales

 $[\rightarrow]$ Advertising expenses, sales promotion expenses, etc.

Tokyo District Court's fact finding and judgment

- (1) The foreign-related transaction is regarded as a motorcycle manufacturing and sales business in the country where the taxpayer and the foreignrelated party are located, and the taxpayer and the foreign-related party are only responsible for their duties. Therefore, since this foreign-related transaction is an integrated manufacturing and sales transaction, the claim of the Taxation Agency is OK.
- (2) At the time of taxation, the Residual Income Split Method was stipulated in Circular 66-4 (5) -5 of the Measures Law, and was a so-called Circular Taxation. However, before the amendment of Article 39-12 of the Order for Enforcement of the Measures Law, it can be interpreted that it was stipulated in the same paragraph, so the TPM of the Taxation Agency rather than the notification tax is OK.
- (3) There is no comparability because the taxable corporation's comparable corporation is not in the same Manaus Free Zone as the foreign party. There is no similarity in the market conditions for receiving government subsidies. If you select a company other than Manaus as a comparable transaction, it is necessary to adjust for differences, but the Tax Authority does not adjusted the differences.

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Tokyo District Court's fact finding and judgment

- Compared to the three basic methods, the residual profit splitting method requires a comparatively low degree of comparability for the comparable company, and even if the similarity of the market is determined based on the gross operating profit margin.
- The benefits in the Manaus region will have a significant effect on the comparability of foreign affiliates with comparable transactions.
- Therefore, taxation using the residual profit split method is illegal because the tax authority has not adjusted for this difference. Subsequent adjustment of the tax authority's gross expense operating margin to court is illegal.

★At the Supreme Court, the Tax Administration made a final attempt at comparability in basic profit calculations!

Tax authority's attempt to adjust the difference

• Gross cost operating margin reflecting Manaus tax benefit profits of foreign parties= 10%

(A)Gross operating margin excluding Manaus tax benefit profits for foreign affiliates= 9%

(B)Difference adjustment ratio = $A \div B = 10 \div 9 = 1.11$

New gross cost operating income ratio (new basic income ratio) of comparable company after adjusting for differences= Total cost operating profit ratio (initial basic profit ratio) of the comparable company at the beginning $6\% \ge 1.11 = 6.66\%$

 \circ Basic profit of foreign related party after adjustment for differences = 6.66% x [Total cost of foreign related party-Cost of forming value of significant intangible asset]

 \star The Tax Authority, at the Supreme Court, showed this calculation and tried to reduce the taxable amount by raising the gross operating profit margin of the comparable company! But it was a failure.

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\star Problems of the tax office's adjustment of differences

• Procedural issues

 $[\rightarrow]$ Such a difference adjustment would be an illegal "replacement of the reason for blue filing", as it would force taxpayers to try new defenses.

Calculation problems

 \rightarrow Because it is a calculation of basic profit, besides calculating the gross operating income ratio excluding the residual profit related to intangible assets, it is calculated the residual profit and the costs related to its formation.

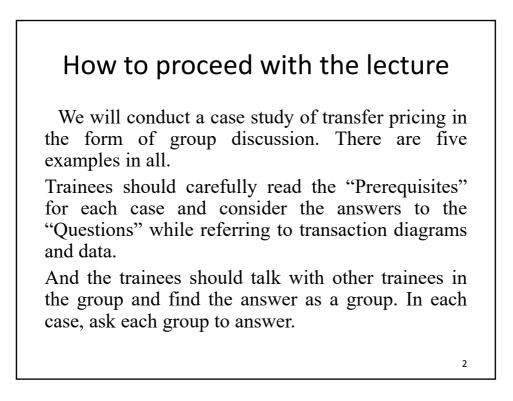
In other words, the calculation of the basic profit stage is not accurate.

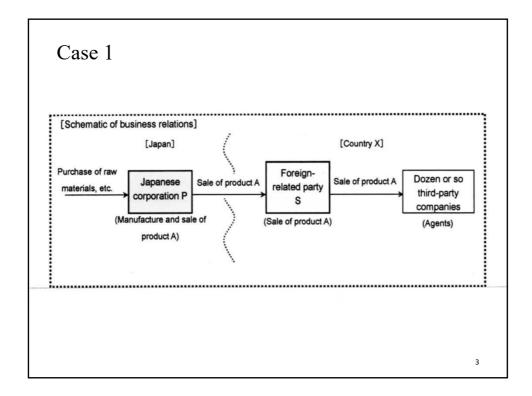
 \star If it was calculated from the beginning, the result might be different

TP Case Study

(Intangible Property)

August, 2018 Prof. Hideaki ISHIGURO Prof. Mikio TAJINO



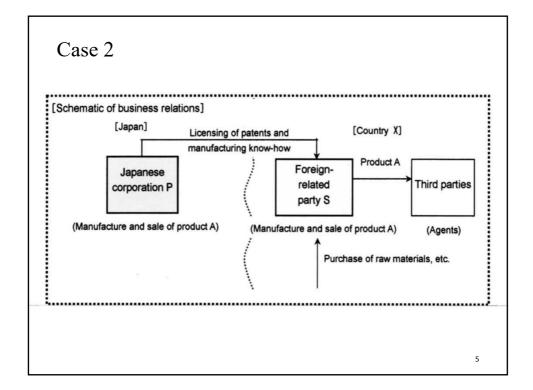


[Prerequisites]

- 1. Japanese company P is a company that manufactures and sells product A, and established company S in country X 10 years ago as a subsidiary that sells product A.
- 2. Product A is a product manufactured using the proprietary technology that is the result of P's research and development activities.
- 3. Company P sells product A to Company S, which sells it to about a dozen third-party agents in country X.
- 4. Company S does not carry out unique advertising and sales promotion activities, but manages a certain amount of product A according to its own sales plan, and resells it in Country X.

[Question]

- 1. When examining the transfer price of product A between Company P and Company S, what transfer pricing method (TPM) can be considered? In that case, which corporation should be the tested party?
- 2. When calculating the arm's length price (ALP) by applying the selected TPM, what should be considered and what should be used as a profit level indicator (PLI)?

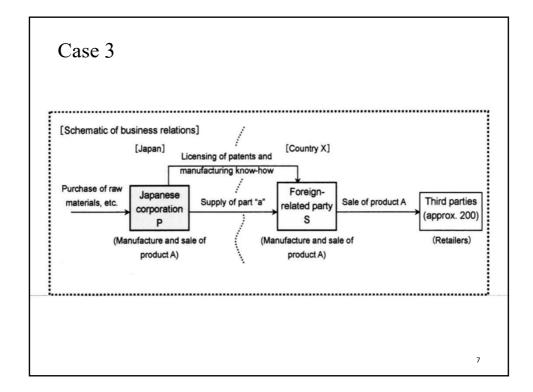


[Prerequisites]

- 1. Japanese company P is a company that manufactures and sells product A, and established company S in country X 10 years ago as a subsidiary that sells product A.
- 2. Product A is a product manufactured using proprietary technology (intangible assets) that is the result of R & D activities of Company P.
- 3. Company P licenses the patent right and manufacturing know-how related to the manufacture of product A to Company S, and receives a royalty (Royalty) from Company S.
- 4. Company S purchases raw materials, etc. in country X, manufactures product A, and sells it to third-party agents in country X.
- 5. There are no inventory transactions between P and S.

[Question]

- 1. When examining the transfer price of the royalties paid by Company S to Company P, what TPM can be considered?
- 2. When calculating ALP by applying the selected TPM, what matters should be considered and what should be used as profit level indicator (PLI)?



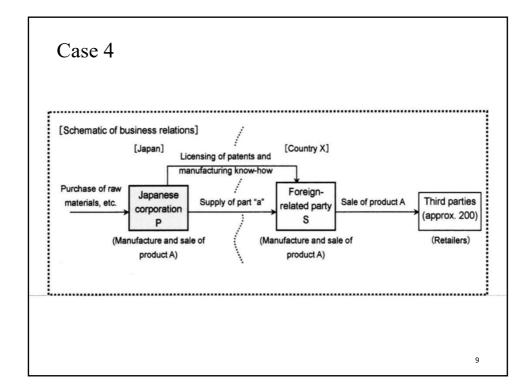
[Prerequisites]

- 1. Japanese company P is a manufacturer and seller of product A, and established company S in country X 10 years ago as a subsidiary that manufactures and sells product A.
- 2. Product A is a product manufactured using proprietary technology (intangible assets) that is the result of R & D activities of Company P.
- 3. Company P sells component a for product A (the main component in which company P's proprietary technology is integrated) to company S, and licenses the patent right and manufacturing know-how related to the manufacture of product A. We have received a royalty from Company S (Royalty).
- 4. Company S manufactures product A by adding other parts to part a and sells it to about 200 third-party retailers in country X.
- 5. Company S gains high product recognition in Country X and maintains a certain market share by building and maintaining an extensive network of retail stores through its own advertising and sales promotion activities using a large number of salespeople.

[Question]

What kind of TPM can be considered when examining the transfer price of the royalties paid by component a and company S to company P?

What should be considered when calculating the ALP by applying the selected TPM?



[Prerequisites]

- 1. Steps 1 to 4 are the same as steps 1 to 4 in Case 3.
- 2. Company P plans to carry out large-scale company image advertising worldwide, and its company name and company logo are widely known nationwide.

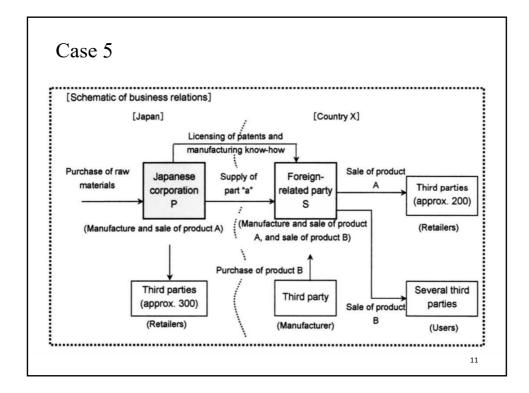
6. Also, under the planning of Company P, large-scale advertising and promotional activities are being conducted on Product A worldwide through TV, magazines, the Internet, etc., and Product A is well known in Country X.7.On the other hand, Company S has a large number of sales representatives,

conducts various sales promotion activities for retail stores and final consumers, and forms an extensive retail store network.

8. As a result, Product A has a certain market share in Country X and is sold at a generally stable price.

[Question]

- 1. What intangible assets are considered relevant in this case?
- 2. Also, divide those intangible assets into those formed by Company P and those formed by Company S.



[Prerequisites]

- 1. Japanese company P is a manufacturer and seller of product A, sells product A in Japan, and established company S in country X 10 years ago as a subsidiary that manufactures and sells product A.
- 2. In addition to manufacturing and selling product A, company S purchases product B from a manufacturer in X and sells it to users in X.
- 3. Product A is a product manufactured using proprietary technology (intangible assets) that is the result of R & D activities of Company P.
- 4. Company P sells component a for product A (the main component in which company P's proprietary technology is integrated) to company S, and licenses the patent right and manufacturing know-how related to the manufacture of product A. We have received a royalty from Company S (Royalty).
- 5. Company S manufactures product A by adding another component to component a and sells it to about 200 third-party retailers in country X.
- 6. Company S gains high product recognition in Country X and maintains a certain market share by building and maintaining an extensive network of retail stores through its own advertising and sales promotion activities using a large number of salespeople. The profit and loss data of Company P and Company S are shown in the following slide.
 12

Company P profit and loss dat	a	Company S profit and loss data	
Company r pront and rose dat			l
Sales of product A	200	Sales of product A	110
Sales of part "a"	35	Sales of product B	500
Royalties received	5	Total sales	610
Total sales	240	Purchases of part "a"	35
Cost of sales of product A	95	Other costs of product A	10
Cost of sales of part "a"	25	Purchases of product B	480
Total cost of sales	120	Royalties paid	5
Gross profit on sales	120	Total cost of sales	530
Product A selling expenses	48	Gross profit on sales	80
Part "a" selling expenses	2	Product A selling expenses	15
R&D cost	25	Product B selling expenses	5
Administrative expenses	15	Administrative expenses	10
Total selling and administrative expenses	90	Total selling and administrative expenses	30
Operating profit	30	Operating profit	50

[Question]

In this case, when applying transfer pricing tax to Company P by applying the Residual Income Split Method (RPSM), answer the following questions 1-8.

- 1. Based on the profit and loss data of companies P and S, calculate the operating profits of companies P and S, respectively, relating to foreign-related transactions between the two companies. The research and development expenses and general administrative expenses of Company P, and the general administrative expenses of Company S include expenses related to foreign-related transactions between the two companies and other expenses.
- 2. Calculate the profits to be split.

[Question]

3. In order to calculate the basic profits (Routine Profits) of Company P and Company S, it is necessary to select the comparable companies (Comparable Corporations) of Company P and Company S, but what should be noted in that case? .

4. In calculating the basic profits of P and S, what should be used as profit level indicators (PLI) for P and S respectively?

5. If the PLIs of P and S are 12% and 4%, respectively, calculate the basic profit to be allocated to P and S respectively.

6. Calculate the Residual Profits.

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Case 5

[Question]

7. If it is recognized that the cause of the residual profit is the patent rights and manufacturing know-how of Company P and the advertising and sales promotion activities of Company S, the data on the following Calculate the split ratio (Company P: Company S) and the residual profit to be allocated to Company P and Company S respectively.

- P's allocated R & D expenses: 9
- Advertising and sales promotion expenses included in the selling expenses of Company A's product A: 6
- 8. Calculate TP Adjustment Amounts for Company P.

Curriculum of International taxation special training

2018/11/27-2018/11/30

	11/26	11/27	11/28	11/29	11/30
	Mon	Tue	Wed	Thu	Fri
(9:00-12:00)		Pre-test Study on Mongolian case	Study on Mongolian case	Study on Mongolian case	Future tasks of Mongolian international taxation system -Transfer pricing case
	Holiday	Kodera, Ishiguro	Kodera, Ishiguro	Kodera, Ishiguro	Kodera
(13:00-16:00)		Study on Mongolian case	Study on Mongolian case	Study on Mongolian case Post-test	Summary discussion
		Kodera, Ishiguro	Kodera, Ishiguro	Kodera, Ishiguro	Kodera

Name of Inspectors

No	Name	Affiliation		
1	Ch.Erdenechimeg	Senior tax inspector, Tax Administration and Cooperation Department, GDT		
2	Kh.Suvd-Erdene	Tax inspector, Tax Administration and Cooperation Department, GDT		
3	N.Jargaltsetseg	Tax inspector, Taxpayer Relations Department, GDT		
4	J.Tserentsoo	Tax inspector, Taxpayer Relations Department, GDT		
5	A.Suvdaa	Tax inspector, Taxpayer Relations Department, GDT		
6	G.Enkhjin	Tax inspector, Tax Revenue Department, GDT		
7	Ts.Bayarmaa	Tax inspector, Internal Audit Department, GDT		
8	N.Tuul	Tax inspector, Training Center, GDT		
9	Sh.Undraa	Tax inspector, Training Center, GDT		
10	B.Batchimeg	Tax inspector, Taxpayer Relations Department, GDT		
11	S.Gunjinlkham	Tax inspector, Taxpayer Relations Department, GDT		
12	D.Batjargal	Senior tax inspector, Tax Audit and Methodology Division, SBRAD		
13	Ts.Delgermaa	Tax inspector, Mining and International Taxation Division, SBRAD		
14	G.Byambasuren	Tax inspector, Mining and International Taxation Division, SBRAD		
15	P.Otgonsuren	Tax inspector, Tax Audit and Methodology Division, SBRAD		
16	N.Bolorchimeg	Tax inspector, Tax Audit and Methodology Division, SBRAD		
17	N.Munkhdavaa	Tax inspector, Tax Audit and Methodology Division, SBRAD		
18	N.Khandkhuu	Tax inspector, Tax Audit and Methodology Division, SBRAD		

19	Ts.Ishjamts	Tax inspector, Tax Audit and Methodology Division, SBRAD	
20	B.Tugsjargal	Tax inspector, Tax Audit and Methodology Division, SBRAD	
21	Sh.Enkhjargal	Tax inspector, Tax Audit and Methodology Division, SBRAD	
22	Yo.Munkhbat	Tax inspector, Taxpayer Relation Division, SBRAD	
23	B.Urantsetseg	Tax inspector, Risk and Statistics Division, SBRAD	
24	Ts.Tuvshinbayar	Tax inspector, Tax Revenue Division, SBRAD	
25	G.Banzragch	Tax inspector, Tax Revenue Division, SBRAD	
26	Kh.Altankhuu	Tax inspector, Administration Division, SBRAD	
27	O.Tsend-Ayush	Tax inspector, Tax Audit and Methodology Division, Capital City Tax Office	
28	J.Erdeneburen	Tax inspector, Administration Division, Capital City Tax Office	
29	Ch.Lkhamragchaa	Tax inspector, Chingeltei District Tax Office	
30	D.Solongo	Tax inspector, Sukhbaatar District Tax Office	
31	Ts.Undarmaa	Tax inspector, Songinokhairkhan District Tax Office	
32	B.Ariunchimeg	Tax inspector, Tax Administration and Cooperation Department, GDT	
33	S.Naranbaatar	Tax inspector, Dornod Province Tax Office	
34	D.Narantsetseg	Head of Public Administration and Management division, Capital City Tax	
		office	
35	S.Duubayar	Tax inspector, Umnugovi Province Tax Office	
36	J.Uyanga	Tax inspector, Tax Administration and Cooperation Department, GDT	

Mongolian Transfer pricing assumed case

JICA Expert Kodera Toshinari

Comprehensive Case Study of Transfer Pricing Issues # 1

- Little X (LX), a Mongolian corporation of Big X (BX) in the Umnu Gobi Desert, is doing a resource mining business. LX is a wholly owned subsidiary of BX.
- In a preliminary survey of LX, KODERA determined that LX's sales to BX were 400 and operating profits to LX were 40 as well. However, BX's figures were unknown. LX has only one business partner of BX.
- KODERA entered the field survey and asked LX's accountant about BX's figures. The account' answer was only that the figures are those of BX as a whole, that is, BX's worldwide sales are 1000 and operating profit is 10 in total. KODERA then persuaded LX's accountant that TP is no longer a global standard, and found that BX's sales to LX were 300, of which LX's operating profit was 60.

2

- Investigator KODERA further investigated the existence of intangible assets of LX and BX in a field survey and found that the R & D costs of LX and BX were 40 and 20, respectively.
- At this point, KODERA noted that a TPM was being used between LX in Mongolia and BX in X. Knowing how to calculate a statistically appropriate operating margin for several third-party companies that do not include intangible assets in the GDT database company's data, KODERA researcher stated that LX was 6.25% from the database.
- BX calculated an operating margin of 5%. This calculation method is also TPM. Although not the final TPM in this case, KODERA knew that it was a popular TPM in Japan if none of its affiliates had intangible assets.

Comprehensive Case Study of Transfer Pricing Issues # 3

- In the middle of the field investigation, KODERA decided to tax the case at a TPM. Already in one of the TP documentation local files submitted to LX, had chosen the CP method.
- In an interim report, the company reported the amount of taxable income to LX, and argued that LX should be considered in the CP method, which is the three basic methods adopted in local files, because it is a manufacturing export business.
- However, investigator KODERA disagreed with LX, stating that the CP method required similar comparable transactions, but no comparable transaction with similar intangibles in the same mining industry as LX.
- Investigator KODERA ultimately taxed LX's declared income by adding an additional 25.

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- Investigator KODERA explained LX, regarding to tax these 25 income amounts, that this is a transfer pricing taxation, unless mutual agreement reached with the partner country, based on a tax treaty, it is impossible to eliminate the economic double taxation.
- At the same time, he explained that appeals and lawsuits are important procedures. LX was dissatisfied with the TP tax, but filed a petition with BX in an attempt to resolve the matter by choosing mutual agreement. But that talk broke down. The Mongolian GDT rejected the agreement with Country X because Country X did not have a corresponding coordination provision for TP taxation. Although the tax treaty has a corresponding adjustment provision, it is not in the domestic law of country X.
- Therefore, there is a fear that even if the country X agrees, it may not be possible to adjust the country X to reduce the taxable income of Mongolia.

5

6

Comprehensive Case Study of Transfer Pricing Issues # 5

- LX filed a complaint with the dispute resolution committee in Mongolia, which could not be resolved through mutual agreement. However, the Dispute Settlement Committee's decision was in Mongolian GDT.
- LX filed a complaint with the court, dissatisfied with it. At trial, LX was admitted by the court, claiming a reduction in taxable income (50% taxable income), claiming that BX's figures to LX were partially incorrect (operating margin) and the Court approved it. GDT followed the court and closed the case.

Comprehensive Case Study of Transfer Pricing Issues # 6 (Question)

- Because of LX use the CP method for local files, shouldn't Kodera examine only that TPM?
- What TPM did KODERA use?
- Isn't KODERA investigator adjusting SG & A expense, FOB / CIF, etc. by comparability check?
- Please provide details of the calculation of the initial taxable income 25.
- Why does mutual agreement eliminate double taxation of TPs?
- Why did the mutual agreement break in this case?
- What does GDT have to do because the lawsuit has reduced it by 50%?

7

• Isn't LX happy because it was reduced in the lawsuit?

1.	Preparatory Survey (at the investigator's office) \rightarrow Examination of declaration form \rightarrow Are there any overseas related transactions?
	Consider whether APA (advance confirmation) is being conducted pan)
	Examination of Attachment 17 (4) \rightarrow Selection of Surveyed rporations (Japan)
★E	Examination of TP documentation (especially local files)Examination
	Examination of the existence and contents of intangible assets Examination of TPM (Best method)

Progress of TP survey # 2

2. On-site survey initial stage

Attend the company and have the company submit the business diagram mainly to overseas and explain the business form. The investigator himself makes a business diagram to grasp the entire international transaction. Selection of comparable transactions \neg Use of database

Check for comparability

Calculation of difference adjustment → Calculation of taxable income

3. Mid-field survey

Interim report to taxpayers \rightarrow Discussions with taxpayers (TPM, adjustment of differences, etc.)

4. Final stage of field survey

Explanation to taxpayers of the details of the adjustment

Advice to taxpayers on taxation after taxation (bilateral consultation, arbitration, Appeal, litigation) Check if there is a corresponding adjustment system in the partner country

Progress of TP survey # 3 Mutual agreement, appeals, litigation

Mutual consultation by taxpayer's request

 \rightarrow Negotiation with foreign countries where foreign parties are located to prevent double taxation based on tax treaties \rightarrow The partner country will adjust the agreed amount accordingly.

If the partner country does not have a domestic law that can make a responsive adjustment, it is difficult to reach an agreement (the provisions of the tax treaty alone are not enough) \Rightarrow Mongolia has no provision for a responsive adjustment, so if tax is imposed, the partner country may refuse to agree on a mutual agreement, so Mongolia must legislate in the future! !!

• Disputes filed by taxpayers

If mutual agreement is not taken after many years of negotiation, taxpayers in Japan can file an appeal under domestic law and subsequently file a lawsuit. This is because at the start of the mutual agreement, at the same time, the taxpayer will also file an appeal. The Appeal Tribunal suspends the appeal trial due to the progress of mutual agreement. The case will proceed in accordance with the Court of Appeals procedure.

Most important point of TP preparation survey 1 (Operating margin)

• It is important for the GDT investigator in Mongolia to select the legal entity to be surveyed by comparing the operating margins of the affiliated companies in the preparatory survey at the office before actually going to the company and conducting a survey (If the operating profit margin of the foreign corporation is unknown at the time of the preparatory survey, ask the first question during the on-site survey!)

An example

- Operating profit margin of Mongolian subsidiary 3%
- Operating profit margin of a foreign company of a Mongolian subsidiary only for transactions with a Mongolian subsidiary 20%

 \rightarrow Obviously, the income of the Mongolian subsidiary has been transferred to a foreign corporation!

Most important point of TP preparation survey 2 (Intangible asset and TPM)

- For example, if a Mongolian subsidiary has mining rights and has intangible assets such as patents, the foreign parent company of this Mongolian subsidiary should also have some intangible assets.
- Have both intangible assets. → In this case, first consider RPSM as the TPM! Of course, if the product price is clear, the CUP method, if the Mongolian subsidiary has no intangible assets, it is possible to consider the TNMM or PS method, etc.

★Has APA(Advanced Pricing Agreement)been submitted?

- The advance confirmation system is a system in which the tax authority confirms the method of calculating the arm's length price for foreign-related transactions conducted by the taxpayer and the specific contents, based on the taxpayer's request for advance confirmation.
- With this system, taxpayers can file their corporate tax returns with peace of mind, and at the same time, the tax authorities can stably and properly enforce the transfer pricing tax system without having to conduct a transfer pricing audit each time.
- The transfer pricing tax will not be investigated in the year of the prior confirmation.

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★ Examination of Attachment 17 (4) (Specification concerning foreign-related parties)

- Japanese investigators look at this table first! ! !
- Review this table to target high-profit foreign stakeholders. National tax authorities have digitized and maintained this table, and are monitoring medium-term trends. This annex is a very good tool that the Japanese tax authorities had taxpayers submit at the time of filing before the introduction of the TP documentation system! !!
- Purpose of this table: Examination of profit status of parent company and subsidiary (→ This is the most important !!)
- In this table: Outline of parent company (or subsidiary), sales, operating profit
- Transaction status and amount of parent company and subsidiary
- 1. Consideration for buying and selling inventory
- 2. Consideration for providing services
- 3. Consideration for intangible asset transactions
- 4. Receiving interest on loans

★Selection method 1 of TP survey target corporations (based on information obtained from Attached Table 17 (4))

• The following cases may be selected. • When the operating profit margin of overseas affiliates is higher than the surveyed corporation • When the operating profit margin of overseas affiliates is higher than peers • When the sales volume of foreign-related parties is expanding year by year-When there is no royalty payment to the surveyed corporation even though the foreign affiliate manufactures and sells

★Selection method 2 of TP survey target corporations (based on disclosure information)

The following cases may be selected.

- When the target corporation is in the red
- Subsidiaries listed in "Status of affiliated companies" in the securities report are listed in Appendix II, not listed in 17 (4).
- In newspapers, "Established a production subsidiary in XX country" "Performance of overseas subsidiaries is strong" "Parent company supports overseas subsidiaries"

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 \star TP survey target selection method 3 (based on information obtained from normal corporate tax survey))

If the following facts are found during a normal corporate tax survey, the company may be selected as a TP surveyed corporation.

- When lending or guaranteeing debt to overseas subsidiaries at low interest rates
- When overseas subsidiaries are taxed by local tax authorities
- When the parent company is fully responsible for personnel transferred to overseas subsidiaries and travel expenses
- Exporting raw materials to poorly performing overseas subsidiaries at a significantly lower price than usual for support purposes.

★ Contents of TP documentation (master file)

- The TP documentation system was introduced in the 2016 tax reform (2016).1)
- 1. Person who is required to submit the master file (business overview report items): A corporate group that has two or more group companies and has a total revenue of 100 billion yen or more in the fiscal year immediately before submission
- 2. Items to be described in the master file: Confirmation of "Business Overview", "Functions / Risks", "Method of Setting Consideration for Intangible Assets, Intra-Group Finance, and Related Transactions" and "APA (Advance Confirmation)"
- 3. Submission language; Japanese or English (English MF submitted to foreign tax authorities may be used)

★Contents of TP documentation (CbC report)

- 1) Persons obliged to submit CbC (Country by Country) reports (country-specific reports): A corporate group that has two or more group companies and has a total revenue of 100 billion yen or more in the fiscal year immediately before submission2) CbC report items
- 2) Quantitative information in the countries and regions where Group companies do business Sales, tax payments, capital, number of employees, main businesses, etc.
- 3) Submission language: English only (CbC report will be exchanged with foreign tax authorities)

\star Contents of TP documentation (local file LF)

- 1) Who must submit LF: Domestic corporations where the transaction volume between domestic corporations and foreign affiliates is 5 billion yen or more (intangible asset transactions are 300 million yen or more).
- 2) CbC report items: Information needed to calculate arm's length price (ALP) → The importance of the LF is right here because the MF is the "Overview" and the CbC report is the "overall quantitative information", so the ALP calculation for any particular related transaction is inadequate! ! !3)
- 3) Submission language: There is no specified language. However, if submitted in a language other than Japanese, the tax authorities may require a Japanese translation.

★ Local file support (examination of taxpayer TPM)

Of the three documents to be documented, consider mainly the local files.

This is because the TPM that the taxpayer applies for is explained.

Is the taxpayer's TPM appropriate? Check more about TP administration guidelines 2-5 (2)"If a corporation has calculated the arm's length price, it is necessary to consider whether the arm's length price can be calculated based on the documents used for the calculation by the corporation and to request the presentation or submission of other documents.

"Investigators, if they find it inadequate, will ask for materials to calculate arm's length prices in addition to the materials submitted by taxpayers.

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★Five points of studying local files

- Overseas related transaction information
- Arm's length price information
- Profit split method information
- Multiple transaction information
- Difference adjustment information

Most important point of TP on-site survey 1 (Operating profit ratio)

• If the operating profit margin of the foreign corporation is unknown at the time of the preparatory survey, ask the first question during the onsite survey!

An example

- Operating profit margin of Mongolian subsidiary 3%
- Operating profit margin of a foreign company of a Mongolian subsidiary only for transactions with a Mongolian subsidiary 20%

```
\rightarrow Obviously, the income of the Mongolian subsidiary has been transferred to a foreign corporation!
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Most important point of TP on site investigation 2 (Intangible asset and TPM)

- For example, if a Mongolian subsidiary has mining rights and has intangible assets such as patents, the foreign parent company of this Mongolian subsidiary should also have some intangible assets. Have both intangible assets. → In this case, first consider RPSM as the TPM!
- In the field survey, if it is decided to use RPSM, to examine the intangible assets of the subsidiary and parent company in detail. The point is R & D expenses and advertising expenses is also need examine.
- Q: Do you know why?
- Of course, if the product price is clear, the CUP method, if the Mongolian subsidiary has no intangible assets, it is possible to consider the TNMM or PS method, etc.

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Most important point of TP on site investigation 3 (TNMM and database)

- For example, if a Mongolian subsidiary has mining rights and no intangible assets such as patents, and it is unclear whether the foreign parent company of this Mongolian subsidiary has any intangible assets, what is the TPM that can be used in these two affiliated company transactions?
- → In this case, TPM should consider TNMM first. However, it is assumed that TNMM companies do not have intangible assets!
- In the field survey, if it is determined that TNMM will be used, the operating margin of the subsidiary will be accurately calculated. Since it is a Mongolian subsidiary, the operating margin is calculated from the (GDT Resource Dept.) data of the corporation (without intangible assets) in Mongolia (average value, etc.).
- If the overseas parent company has no intangible assets, its operating margin may be calculated from the database. The basic usage of the database can be understood in the training of the database company. Of course, if the product price is clear, the CUP method and the CP method can be considered because Mongolian subsidiaries are mineral resources exporters.

Curriculum of International taxation special training and Follow up training

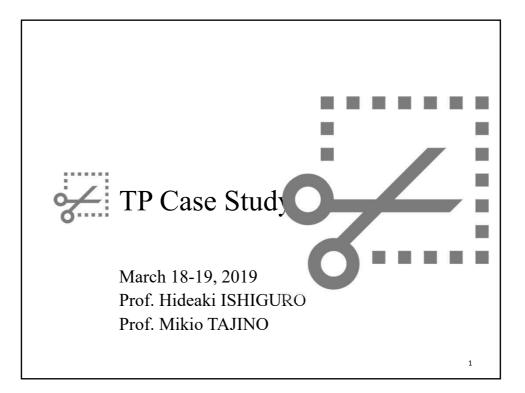
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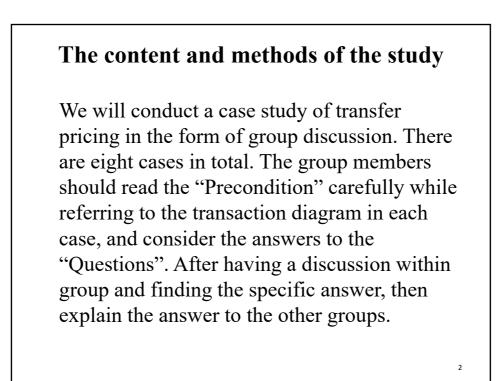
	3/18		3/20	3/21	3/22	
Mon		Mon Tue		Thu	Fri	
	International taxation (All train		Follow up training (Trainees who didn't participate in training (Japan)			
(9:00-12:00)	Transfer pricing taxation (case study)	Transfer pricing taxation (case study)	Presentation by trainees who participated in training Japan	Presentation by trainees who participated in training Japan	Training in Japan Follow up	
	Tajino, Ishiguro	Tajino, Ishiguro	Trainees	Trainees	Kodera	
(13:00-16:00)	Transfer pricing taxation (case study)Transfer pricing taxation (case study)		Presentation by trainees who participated in training Japan	Presentation by trainees who participated in training Japan	Summary discussion	
	Tajino, Ishiguro	Tajino, Ishiguro	Trainees	Trainees	Kodera, Tajino	

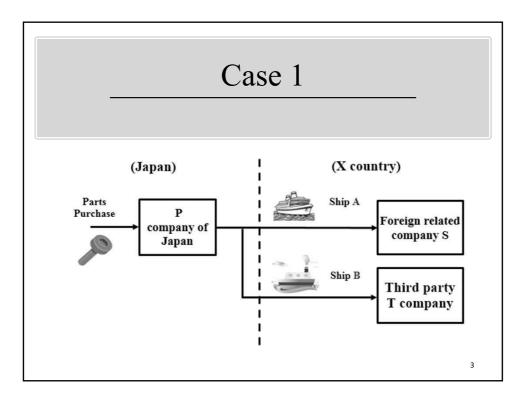
Name of Inspectors

No	Name	Affiliation		
1	Ch.Erdenechimeg	Senior tax inspector, Tax Administration and Cooperation Department, GDT		
2	Kh.Suvd-Erdene	Tax inspector, Tax Administration and Cooperation Department, GDT		
3	B.Ariunchimeg	Tax inspector, Tax Administration and Cooperation Department, GDT		
4	N.Bilguun	Tax inspector, Public Administration and Management Department, GDT		
5	N.Jargaltsetseg	Tax inspector, Taxpayer Relations Department, GDT		
6	J.Tserentsoo	Tax inspector, Taxpayer Relations Department, GDT		
7	G.Enkhjin	Tax inspector, Tax Revenue Department, GDT		
8	Ts.Bayarmaa	Tax inspector, Internal Audit Department, GDT		
9	Sh.Undraa	Tax inspector, Training Center, GDT		
10	B.Batchimeg	Tax inspector, Taxpayer Relations Department, GDT		
11	S.Gunjinlkham	Tax inspector, Taxpayer Relations Department, GDT		
12 S.Tugsjargal Senior tax inspector, Mining and International Taxation D		Senior tax inspector, Mining and International Taxation Division, SBRAD		
13	Ts.Delgermaa	Tax inspector, Mining and International Taxation Division, SBRAD		
14	G.Byambasuren	Tax inspector, Mining and International Taxation Division, SBRAD		
15	D.Batjargal	Senior tax inspector, Tax Audit and Methodology Division, SBRAD		
16	P.Otgonsuren	Tax inspector, Tax Audit and Methodology Division, SBRAD		
17	N.Bolorchimeg	Tax inspector, Tax Audit and Methodology Division, SBRAD		
18	N.Munkhdavaa	Tax inspector, Tax Audit and Methodology Division, SBRAD		
19	N.Khandkhuu	Tax inspector, Tax Audit and Methodology Division, SBRAD		

20	B.Tugsjargal	Tax inspector, Tax Audit and Methodology Division, SBRAD
21	Sh.Enkhjargal	Tax inspector, Tax Audit and Methodology Division, SBRAD
22	Yo.Munkhbat	Tax inspector, Taxpayer Relation Division, SBRAD
23	A.Suvdaa	Tax inspector, Taxpayer Relations Department, GDT
24	B.Urantsetseg	Tax inspector, Risk and Statistics Division, SBRAD
25	G.Banzragch	Tax inspector, Tax Revenue Division, SBRAD
26	Kh.Altankhuu	Tax inspector, Administration Division, SBRAD
27	O.Tsend-Ayush	Tax inspector, Tax Audit and Methodology Division, Capital City Tax Office
28	J.Erdeneburen	Tax inspector, Administration Division, Capital City Tax Office
29	L.Davaasuren	Tax inspector, Bayazurkh District Tax Office
30	Ch.Lkhamragchaa	Tax inspector, Chingeltei District Tax Office
31	D.Solongo	Tax inspector, Sukhbaatar District Tax Office
32	S.Naranbaatar	Tax inspector, Dornod Province Tax Office
33	D.Narantsetseg	Head of Public Administration and Management division, Capital City Tax
		office
34	S.Duubayar	Tax inspector, Umnugovi Province Tax Office





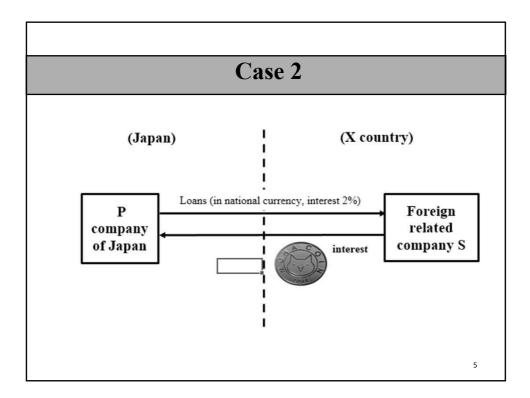


[Precondition]

- 1. Japanese company P, a ship manufacturing company, established a subsidiary company S in country X in the shipping business 10 years ago.
- 2. According to the shipbuilding contract between Company P and Company S, ship A was manufactured by Company P and transferred to Company S.
- 3. Company P also entered into a shipbuilding contract with Company T, a third party in Country X, and at the same time built ship B and transferred to Company T.
- 4. Compare to ship A, the ship B is a bit different as equipment, but the same type in terms of size, structure, function.

[Question]

- 1. In the case of transfer price investigation on ship A, between Company P and S, what TPM should be considered first?
- 2. What matters should be considered, when calculating the ALP by using the selected TPM?



(Precondition)

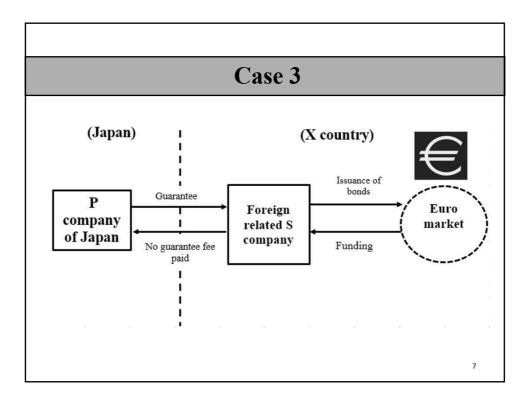
- 1. Japanese company P which is a machine manufacturer and distributor established a subsidiary company S, a machine detail manufacturing company, in country X 10 years ago.
- 2. Company S needed a funding in other to broaden business activities.
- 3. Therefore, Company P concluded a money lending agreement with Company S and lent funds to Company S by the currency of country X (equivalent to 1 billion yen in Japanese yen, for 10 years, fixed interest rate 2%).
- 4. Annually interest rate of 2% is the prime lending rate (Prime Rate) when company P takes a credit from Japanese Bank and it is much lower than the lending interest rate in the bank of Country X.
- 5. Company S pays Company P an interest equivalent to 2% per annum by the currency of Country X each year in accordance with the loan agreement.

(Question)

1. What are the transfer pricing issues in the money lending agreement between Company P and Company S? Which TPM should be considered first?

6

2. If you apply the selected TPM, what is considered suitable for ALP?



[Precondition]

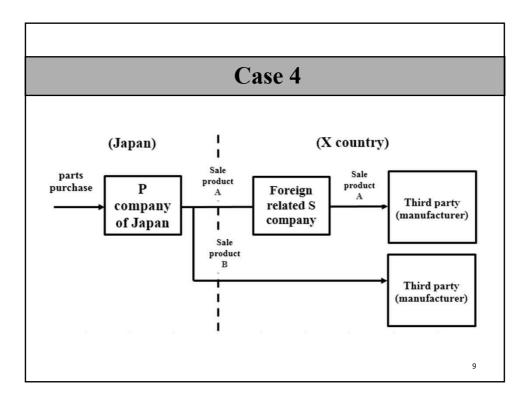
- 1. Japan P is a food product manufacturer and distributor, and established S Subsidiary, a financial company, one year ago in X country.
- 2. Company P has a credit rating of "AA", but Company S has no creditworthiness and cannot independently raise funds through the issuance of bonds.
- 3. Company S outsourced the guarantee to Company P in issuing bonds and raising funds (10 billion yen in Japanese yen) from the euro market, and Company P underwrote the guarantee.
- 4. There is no guarantee fee paid by Company S to Company P.

[Question]

• What are the transfer pricing issues in the guarantee transaction between P and S? Which TPM should be considered first?

8

• If you apply the selected TPM, what is considered suitable for ALP?

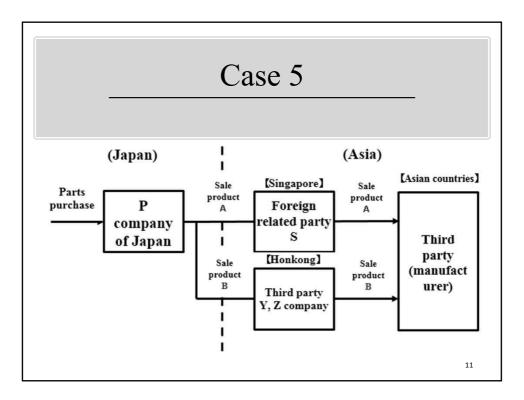


[Precondition]

- 1. Japanese company P is a manufacturer of electronic products, Product A and Product B, and established Company S as a subsidiary that sells Product A 10 years ago in Country X.
- 2. Company P sells product A to company S, which sells it to third-party electronics manufacturers in country X.
- 3. Company P sells Product B directly to a third-party electronics manufacturer in Country X.
- 4. The product B is not same product as the product A, but is similar in the terms of feature, structure and function.
- 5. The sales volume of the product B is about one tenth (10%) of the product A.

[Question]

- 1. What TPM can be considered, when examining the transfer price on product A between Company P and Company S,? In that case, which corporation should be the Tested Party?
- 2. What matters should be considered, when calculating the ALP by using the selected TPM? 10

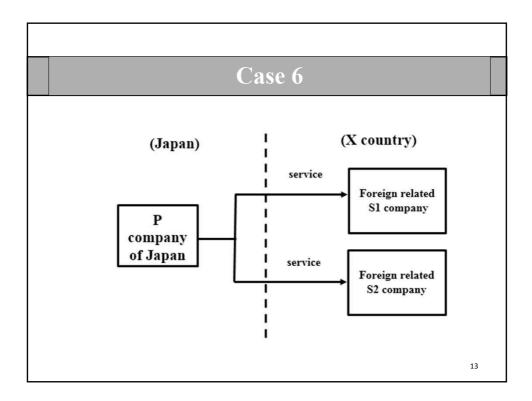


[Precondition]

- 1. Japanese company P, a manufacturer of electronical parts as Product A and Product B, established Company S as a subsidiary company that sells Product A, 10 years ago in Singapore.
- 2. Company P sells product A to Company S, which sells it to third-party machine manufacturers in Asian countries.
- 3. Company P has been selling product B to Hong Kong's third-party agents Y and Z since its establishment of Company S. These 2 companies sell the products to the third parties, electronic part manufacturers in Asian countries.
- 4. The product B is not the same product as the product A, but is similar in feature, structure and function.

[Question]

- 1. What TPM can be considered when examining the transfer price of Product A between Company P and Company S? If so, which corporation should be the Tested Party?
- 2. When calculating the ALP by applying the selected TPM, what matters should be considered?

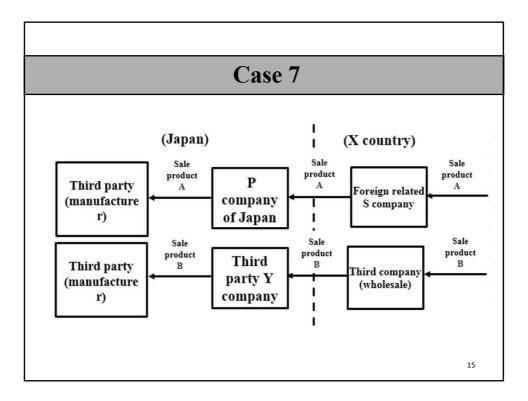


[Precondition]

- 1. Japanese company P is a manufacturer and seller of air conditioners, and has established a company S1 and a company S2 in country X as subsidiaries to manufacture the parts of air conditioner.
- 2. Company P leases a machine for manufacturing parts to S1 and S2, and concludes a technical guidance agreement with S1 and S2 on the operation of the machine.
- 3. According to the contract, Company P dispatched one technician to each of S1 and S2, and provided them with instruction for a year.
- 4. Under the contract, the technical instruction fee is free of charge.

[Question]

- 1. What are the transfer pricing issues in the technical instruction agreement between P and S1 and S2? What kind of TPM can be considered when examining the transfer price for the provided services (technical guidance)?
- 2. What should be considered when calculating ALP by using the selected TPM?

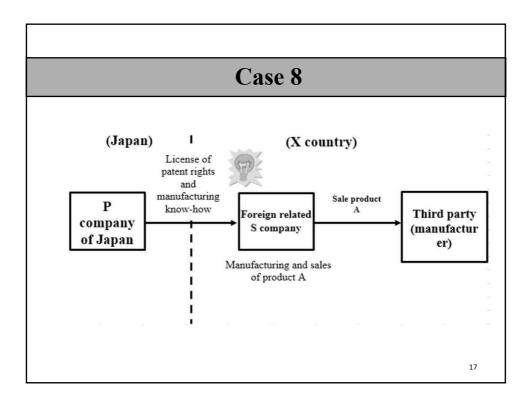


[Precondition]

- 1. Japanese corporation P is an import and wholesale company for small motors, Product A, and established a corporation S as a subsidiary to export Product A to Japan in Country X 10 years ago.
- 2. Company S purchases product A from a motor manufacturer in Country X and exports it to Company P, which sells it to several third-party manufacturers.
- 3. P did not cooperate with the tax authorities in the transfer pricing investigation and did not submit any documents deemed necessary to determine the arm's length price for the transaction with S.
- 4. Investigations by tax authorities have shown that there is a comparable transaction between product A and product B between third parties.
- 5. The product B is not homogenous as the product A, but is similar in size, structure and function. However, information on the transaction of Product B is not disclosed.

[Question]

- 1. What do you think the Japanese tax authorities will do when examining the transfer price of product A between P and S? If tax is imposed on Company P, what TPM should be applied and which company should be the Tested Party?
- 2. What should be used as PLI when calculating ALP by using selected TPM?



[Precondition]

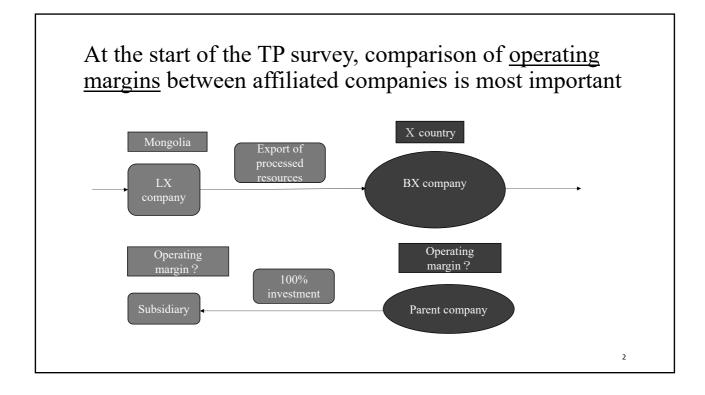
- 1. Japanese company P, a semiconductor manufacturing and sales company, established company S as a subsidiary that manufactures and sells product A, in country X 10 years ago .
- 2. Company P licenses Company S for a patent right and manufacturing knowhow related to the manufacture of semiconductors, and receives a royalty from Company S.
- 3. The product A is a product that is manufactured by using the patent right and the manufacturing know-how of the company P.
- 4. Company S purchases raw materials in country X, manufactures product A, and sells it to machine manufacturers, third parties in country X.
- 5. There are no inventory transactions between P and S.

[Question]

- 1. What kind of TPM is possible to be used when Company P investigates the transfer price of the royalties collected from Company S?
- 2. How to calculate ALP by using the selected TPM?

Mongolian mining industry RPSM assumed case

JICA Expert Kodera Toshinari



- Little X (LX), a Mongolian corporation of Big X (BX) in the Ummnu Gobi Desert, is doing a resource mining business. LX is a wholly owned subsidiary of BX.
- In a preliminary survey of LX, KODERA determined that LX's sales to BX were 400 and operating profits to LX were 40 as well. However, BX's figures were unknown. LX has only one business partner of BX.
- KODERA entered the field survey and asked LX's accountant about BX's figures. The account' answer was only that the figures are those of BX as a whole, that is, BX's worldwide sales are 1000 and operating profit is 10 in total. KODERA then persuaded LX's accountant that TP is no longer a global standard, and found that BX's sales to LX were 300, of which LX's operating profit was 60.

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Comprehensive Case Study of Transfer Pricing Issues # 2

- Investigator KODERA further investigated the existence of intangible assets of LX and BX in a field survey and found that the R & D costs of LX and BX were 40 and 20, respectively.
- At this point, KODERA noted that a TPM was being used between LX in Mongolia and BX in X. Knowing how to calculate a statistically appropriate operating margin for several third-party companies that do not include intangible assets in the GDT database company's data, KODERA researcher stated that LX was 6.25% from the database.
- BX calculated an operating margin of 5%. This calculation method is also TPM. Although not the final TPM in this case, KODERA knew that it was a popular TPM in Japan if none of its affiliates had intangible assets.

- In the middle of the field investigation, KODERA decided to tax the case at a TPM. Already in one of the TP documentation local files submitted to LX, had chosen the CP method.
- In an interim report, the company reported the amount of taxable income to LX, and argued that LX should be considered in the CP method, which is the three basic methods adopted in local files, because it is a manufacturing export business.
- However, investigator KODERA disagreed with LX, stating that the CP method required similar comparable transactions, but no comparable transaction with similar intangibles in the same mining industry as LX.
- Investigator KODERA ultimately taxed LX's declared income by adding an additional 25.

Comprehensive Case Study of Transfer Pricing Issues # 4

- Investigator KODERA explained LX, regarding to tax these 25 income amounts, that this is a transfer pricing taxation, unless mutual agreement reached with the partner country, based on a tax treaty, it is impossible to eliminate the economic double taxation.
- At the same time, he explained that appeals and lawsuits are important procedures. LX was dissatisfied with the TP tax, but filed a petition with BX in an attempt to resolve the matter by choosing mutual agreement. But that talk broke down. The Mongolian GDT rejected the agreement with Country X because Country X did not have a corresponding coordination provision for TP taxation. Although the tax treaty has a corresponding adjustment provision, it is not in the domestic law of country X.
- Therefore, there is a fear that even if the country X agrees, it may not be possible to adjust the country X to reduce the taxable income of Mongolia.

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- LX filed a complaint with the dispute resolution committee in Mongolia, which could not be resolved through mutual agreement. However, the Dispute Settlement Committee's decision was in Mongolian GDT.
- LX filed a complaint with the court, dissatisfied with it. At trial, LX was admitted by the court, claiming a reduction in taxable income (50% taxable income), claiming that BX's figures to LX were partially incorrect (operating margin) and the Court approved it. GDT followed the court and closed the case.

Comprehensive Case Study of Transfer Pricing Issues # 6 (Question)

- Because of LX use the CP method for local files, shouldn't Kodera examine only that TPM?
- What TPM did KODERA use?
- Isn't KODERA investigator adjusting SG & A expense, FOB / CIF, etc. by comparability check?
- Please provide details of the calculation of the initial taxable income 25.
- Why does mutual agreement eliminate double taxation of TPs?
- Why did the mutual agreement break in this case?
- What does GDT have to do because the lawsuit has reduced it by 50%?
- Isn't LX happy because it was reduced in the lawsuit?

Progress of TP survey # 1 1. Preparatory Survey (at the investigator's office) → Examination of declaration form → Are there any overseas related transactions? ★ Consider whether APA (advance confirmation) is being conducted (Japan) ★ Examination of Attachment 17 (4) → Selection of Surveyed Corporations (Japan) ★ Examination of TP documentation (especially local files)Examination ★ Examination of the existence and contents of intangible assets → Examination of TPM (Best method)

Progress of TP survey # 2

2. On-site survey initial stage

Attend the company and have the company submit the business diagram mainly to overseas and explain the business form. The investigator himself makes a business diagram to grasp the entire international transaction. Selection of comparable transactions $[\rightarrow]$ Use of database

Check for comparability

Calculation of difference adjustment \rightarrow Calculation of taxable income

3. Mid-field survey

Interim report to taxpayers → Discussions with taxpayers (TPM, adjustment of differences, etc.)

4. Final stage of field survey

Explanation to taxpayers of the details of the adjustment

Advice to taxpayers on taxation after taxation (bilateral consultation, arbitration, Appeal, litigation) Check if there is a corresponding adjustment system in the partner country

Progress of TP survey # 3 Mutual agreement, appeals, litigation

Mutual consultation by taxpayer's request

 \rightarrow Negotiation with foreign countries where foreign parties are located to prevent double taxation based on tax treaties \rightarrow The partner country will adjust the agreed amount accordingly.

If the partner country does not have a domestic law that can make a responsive adjustment, it is difficult to reach an agreement (the provisions of the tax treaty alone are not enough) \Rightarrow Mongolia has no provision for a responsive adjustment, so if tax is imposed, the partner country may refuse to agree on a mutual agreement, so Mongolia must legislate in the future! !!

• Disputes filed by taxpayers

If mutual agreement is not taken after many years of negotiation, taxpayers in Japan can file an appeal under domestic law and subsequently file a lawsuit. This is because at the start of the mutual agreement, at the same time, the taxpayer will also file an appeal. The Appeal Tribunal suspends the appeal trial due to the progress of mutual agreement. The case will proceed in accordance with the Court of Appeals procedure.

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Most important point of TP preparation survey 1 (Operating margin)

• It is important for the GDT investigator in Mongolia to select the legal entity to be surveyed by comparing the operating margins of the affiliated companies in the preparatory survey at the office before actually going to the company and conducting a survey (If the operating profit margin of the foreign corporation is unknown at the time of the preparatory survey, ask the first question during the on-site survey!)

An example

- Operating profit margin of Mongolian subsidiary 3%
- Operating profit margin of a foreign company of a Mongolian subsidiary only for transactions with a Mongolian subsidiary 20%

ļ	Obviously,	the income	of the	Mongolian	subsidiary	has been	transferred
0 8	a foreign cor	poration!		C	2		

Most important point of TP preparation survey 2 (Intangible asset and TPM)

- For example, if a Mongolian subsidiary has mining rights and has intangible assets such as patents, the foreign parent company of this Mongolian subsidiary should also have some intangible assets.
- Have both intangible assets. → In this case, first consider RPSM as the TPM! Of course, if the product price is clear, the CUP method, if the Mongolian subsidiary has no intangible assets, it is possible to consider the TNMM or PS method, etc.

★Has APA(Advanced Pricing Agreement)been submitted?

- The advance confirmation system is a system in which the tax authority confirms the method of calculating the arm's length price for foreign-related transactions conducted by the taxpayer and the specific contents, based on the taxpayer's request for advance confirmation.
- With this system, taxpayers can file their corporate tax returns with peace of mind, and at the same time, the tax authorities can stably and properly enforce the transfer pricing tax system without having to conduct a transfer pricing audit each time.
- The transfer pricing tax will not be investigated in the year of the prior confirmation.

★ Examination of Attachment 17 (4) (Specification concerning foreign-related parties)

- Japanese investigators look at this table first! ! !
- Review this table to target high-profit foreign stakeholders. National tax authorities have digitized and maintained this table, and are monitoring medium-term trends. This annex is a very good tool that the Japanese tax authorities had taxpayers submit at the time of filing before the introduction of the TP documentation system! !!
- Purpose of this table: Examination of profit status of parent company and subsidiary (→ This is the most important !!)
- In this table: Outline of parent company (or subsidiary), sales, operating profit
- Transaction status and amount of parent company and subsidiary
- 1. Consideration for buying and selling inventory
- 2. Consideration for providing services
- 3. Consideration for intangible asset transactions
- 4. Receiving interest on loans

★Selection method 1 of TP survey target corporations (based on information obtained from Attached Table 17 (4))

• The following cases may be selected. • When the operating profit margin of overseas affiliates is higher than the surveyed corporation • When the operating profit margin of overseas affiliates is higher than peers • When the sales volume of foreign-related parties is expanding year by year-When there is no royalty payment to the surveyed corporation even though the foreign affiliate manufactures and sells

★Selection method 1 of TP survey target corporations (based on disclosure information)

The following cases may be selected.

- When the target corporation is in the red
- Subsidiaries listed in "Status of affiliated companies" in the securities report are listed in Appendix II, not listed in 17 (4).
- In newspapers, "Established a production subsidiary in XX country" "Performance of overseas subsidiaries is strong" "Parent company supports overseas subsidiaries"

 \star TP survey target selection method 3 (based on information obtained from normal corporate tax survey))

If the following facts are found during a normal corporate tax survey, the company may be selected as a TP surveyed corporation.

- When lending or guaranteeing debt to overseas subsidiaries at low interest rates
- When overseas subsidiaries are taxed by local tax authorities
- When the parent company is fully responsible for personnel transferred to overseas subsidiaries and travel expenses
- Exporting raw materials to poorly performing overseas subsidiaries at a significantly lower price than usual for support purposes.

★ Contents of TP documentation (master file)

- The TP documentation system was introduced in the 2016 tax reform (2016).1)
- 1. Person who is required to submit the master file (business overview report items): A corporate group that has two or more group companies and has a total revenue of 100 billion yen or more in the fiscal year immediately before submission
- 2. Items to be described in the master file: Confirmation of "Business Overview", "Functions / Risks", "Method of Setting Consideration for Intangible Assets, Intra-Group Finance, and Related Transactions" and "APA (Advance Confirmation)"
- 3. Submission language; Japanese or English (English MF submitted to foreign tax authorities may be used)

★Contents of TP documentation (CbC report)

- 1) Persons obliged to submit CbC (Country by Country) reports (country-specific reports): A corporate group that has two or more group companies and has a total revenue of 100 billion yen or more in the fiscal year immediately before submission2) CbC report items
- 2) Quantitative information in the countries and regions where Group companies do business Sales, tax payments, capital, number of employees, main businesses, etc.
- 3) Submission language: English only (CbC report will be exchanged with foreign tax authorities)

\star Contents of TP documentation (local file LF)

- 1) Who must submit LF: Domestic corporations where the transaction volume between domestic corporations and foreign affiliates is 5 billion yen or more (intangible asset transactions are 300 million yen or more).
- 2) CbC report items: Information needed to calculate arm's length price (ALP) → The importance of the LF is right here because the MF is the "Overview" and the CbC report is the "overall quantitative information", so the ALP calculation for any particular related transaction is inadequate! ! !3)
- 3) Submission language: There is no specified language. However, if submitted in a language other than Japanese, the tax authorities may require a Japanese translation.

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★ Local file support (examination of taxpayer TPM)

Of the three documents to be documented, consider mainly the local files.

This is because the TPM that the taxpayer applies for is explained.

Is the taxpayer's TPM appropriate? Check more about TP administration guidelines 2-5 (2)"If a corporation has calculated the arm's length price, it is necessary to consider whether the arm's length price can be calculated based on the documents used for the calculation by the corporation and to request the presentation or submission of other documents.

"Investigators, if they find it inadequate, will ask for materials to calculate arm's length prices in addition to the materials submitted by taxpayers.

\star Five points of studying local files

- Overseas related transaction information
- Arm's length price information
- Profit split method information
- Multiple transaction information
- Difference adjustment information

Most important point of TP on-site survey 1 (Operating profit ratio)

• If the operating profit margin of the foreign corporation is unknown at the time of the preparatory survey, ask the first question during the onsite survey!

An example

- Operating profit margin of Mongolian subsidiary 3%
- Operating profit margin of a foreign company of a Mongolian subsidiary only for transactions with a Mongolian subsidiary 20%

\rightarrow	Obviously,	the	income	of	the	Mongolian	subsidiary	has	been
trai	nsferred to a f	orei	gn corpor	atic	on!				

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Most important point of TP on site investigation 2 (Intangible asset and TPM)

- For example, if a Mongolian subsidiary has mining rights and has intangible assets such as patents, the foreign parent company of this Mongolian subsidiary should also have some intangible assets. Have both intangible assets. |→] In this case, first consider RPSM as the TPM!
- In the field survey, if it is decided to use RPSM, to examine the intangible assets of the subsidiary and parent company in detail. The point is R & D expenses and advertising expenses is also need examine.
- Q: Do you know why?
- Of course, if the product price is clear, the CUP method, if the Mongolian subsidiary has no intangible assets, it is possible to consider the TNMM or PS method, etc.

Most important point of TP on site investigation 3 (TNMM and database)

- For example, if a Mongolian subsidiary has mining rights and no intangible assets such as patents, and it is unclear whether the foreign parent company of this Mongolian subsidiary has any intangible assets, what is the TPM that can be used in these two affiliated company transactions?
- \neg In this case, TPM should consider TNMM first. However, it is assumed that TNMM companies do not have intangible assets!
- In the field survey, if it is determined that TNMM will be used, the operating margin of the subsidiary will be accurately calculated. Since it is a Mongolian subsidiary, the operating margin is calculated from the (GDT Resource Dept.) data of the corporation (without intangible assets) in Mongolia (average value, etc.).
- If the overseas parent company has no intangible assets, its operating margin may be calculated from the database. The basic usage of the database can be understood in the training of the database company. Of course, if the product price is clear, the CUP method and the CP method can be considered because Mongolian subsidiaries are mineral resources exporters.

Japan's newest TP taxation system reform in 2019

2019.3.22 JICA project expert Kodera Toshinari

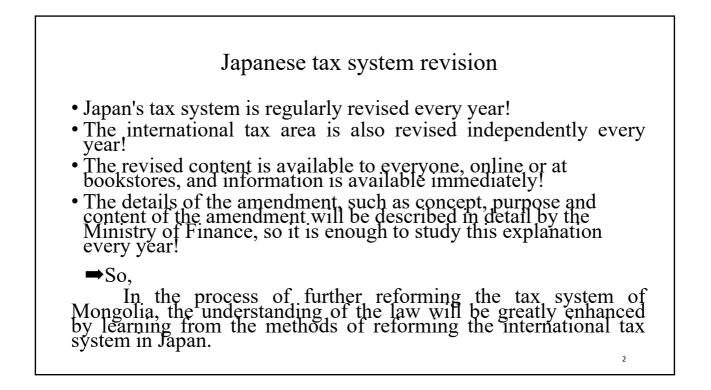


Table of contents

Latest revision of TP taxation system in 2019

In 2019, amendments were made, such as revising the consolidated taxation of foreign subsidiaries and the income-generating system, adding partner countries to the automatic exchange of information on financial accounts, introducing tax exemptions for the Olympic Games in Tokyo.

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Latest revision of TP taxation Q & A

- Q1: Regarding the TP tax system, What is "reform based on the recommendations of the BEPS project". What is the recommendation?
- Q2: What is the outline of the transfer pricing tax reform?
- Q3 Important Explanation: New TPM → Adoption of DCF method Adopting income-compatibility standards
- Q4 Important commentary: Improvement of difference adjustment method → Adoption of statistical quartile method

Q1 What are the recommendations of the "BEPS Project" for TP taxation system?

BEPS Recommendation

When the comparable transaction of the intangible asset transaction cannot be specified → Calculate arm's length price calculation of intangible assets by DCF method → DCF method:

Following the BEPS recommendations \rightarrow the OECD Transfer Pricing Guidelines were revised (Chapter 6).

Intangible asset transactions are difficult to evaluate

 \rightarrow If it is difficult to make an accurate assessment at the time of the transaction, there is a large divergence between the predicted result and the actual result.

Therefore, the tax authorities assume that the initial price has not been properly calculated and will be able to re-evaluate the initial price taking into account actual results (income-compatibility criteria).

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Q2 What is the outline of the latest transfer pricing taxation reform in Japan?

- (1) Addition of TPM (Method of calculating prices between independent companies)
 - → Add DCF (Discount Cash Flow) method to TPM.
- (2) Introduction of price adjustment measures for intangible asset transactions that are difficult to evaluate
 - ➡ For intangible asset transactions that are difficult to value, tax agency will evaluate actual results if the results differ from the expected results. (However, in case if valuation amount after re-evaluation exceeds 20% of the original valuation)
- (3) Definition of intangible assets
- \Rightarrow Assets, other than tangible assets and financial assets, which is payable if there is a transfer or lease between independent businesses
- (4) TP adjustment period \Rightarrow From 6 years to 7 years.
- (5) A method based on a statistical method is permitted for the adjustment of differences related to comparable transactions.
 - ➡ Adopt quartile method
- (6) Applicable year Applicable for corporate tax for the fiscal year beginning on or after April 1, 2020

Q3 Important Explanation: Adoption of DCF method

• As for the method of ALP, in line with the OECD's Price Transition Guidelines, the DCF method has been added to calculate the value of an intangible asset transaction where comparable transaction cannot be found.

As a result, the information that was available to the relevant staff of the NTA at the time of foreign transactions was used in the calculation method for estimated taxation when there were no documents deemed necessary to calculate the arm's length price. On the basis of this, a method is adopted in which the amount calculated by the DCF method is used as an arm's length price.

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DCF method 1 (Concept of present value)

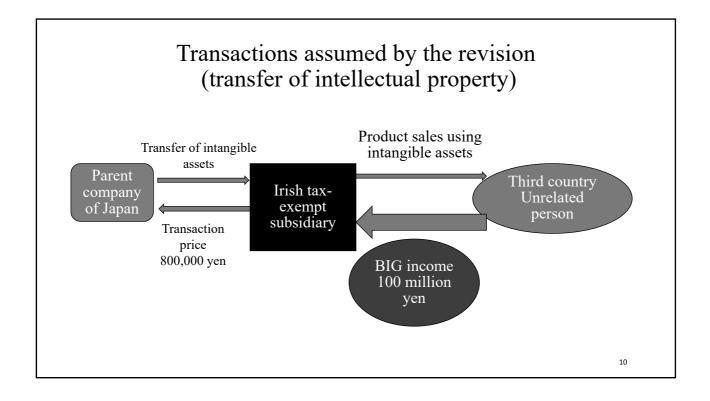
- Basic concept: present value
- Value of money C to be received in the future as of today = "present value" (PV)
- $PV = C / (1 + r)^n \{r\}$ is the discount rate
- For example, suppose that when the interest rate (the interest rate on government bonds) is 2%, one year later, 100 yen is received as a pension from the government . The present value (pv) of 100 yen at this time, if the interest rate is used as it is as a discount rate,
- PV = 100 / 1.02 = 98.04 yen

DCF method II (future CASH FLOW)

- Basic concept: present value of future cash flows = asset value
 ➡ Calculation method of present value of cash flow = DCF method
- One year, two years, three years, ... n years later, C1, C2, C3, ... Suppose we create a cache of \$ CN. The risk (discount rate) at this time is r Assuming the asset value by the DCF method,
- $PV = C1/(1+r)^{1}+C2/(1+r)^{2}+C3/(1+r)^{3}$ ••• $CN/(1+r)^{n}$
- For example, if the annual rent income is 3.5 million yen, the maintenance cost is 500,000 yen, and the monetary value of the house to be demolished in 10 years is 5%, the discount rate is as follows:

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• PV=300/1.05+300/1.05²+•••300/1.05¹⁰=231.65 million yen



Questions and worries of the Japanese tax authorities in	
assumed transactions	

- Challenges for the Japanese Tax Agency
 " Did the parent company really know in advance that it would succeed? Did it transferred intellectual property at 800,000 yen intentionally? Looking at the future value of intellectual property, if the transfer price were worth 100,000,000 yen? "
- Concerns of the tax agency in Japan
 "There is no comparable transaction with regard to Japanese parent company and Irish subsidiary"
 →Sure! If there were comparable transactions, this would not be said

 $[\rightarrow]$ Sure! If there were comparable transactions, this would not be said as intellectual property transactions. What can be done! !!!

Solutions based on BEPS theory and OECD guidelines: Income-compatibility criteria

- Income Compatibility Standard is a new taxation method that, under certain conditions, reclassifies the transfer price of intellectual property based on actual results.
- (It has already been adopted in the US and Germany.)
- In this case, the rule "The transfer of intellectual property rights to the Irish subsidiary means that the Irish subsidiary has not fulfilled its role in developing, improving, maintaining, protecting and using its intangible assets, or has been involved in a variety of businesses that have used its intellectual property. Irish subsidiary cannot record disproportionate income unless significant business risk is controlled by Irish subsidiary." is established.
- Also, the rule "In fact, revenue is transferred to a parent company in Japan, which is responsible for the development and risks." is stipulated.

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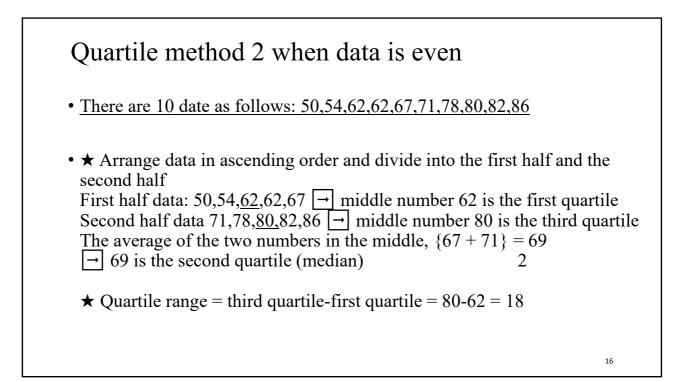
Q4 Important commentary: Adoption of statistical quartile method

- Regarding TPM adjustments based on comparable transaction profit margins, adjustments can be made using the statistical quarterly method if there are difficulties with adjustments due to the difference in numbers.
- The statistical quartile method is a method which divides the profit margin of the comparable transaction into four in order consisting of the upper and lower limits excluding the upper 25% and lower 25% (this is regarded as an abnormal value) to calculate arm's length price within the range.

Quartile method 1 when data is odd

• There are 11 date as follows: 50,54,62,62,67,71,78,80,82,86,87

★ Arrange data in ascending order and divide into the first half and the second half
First half data: 50,54,62,62,67 → middle number 62 is the first quartile
Second half data 78,80,82,86,86 → The middle number 82 is the third quartile
Just the middle number 71 → the second quartile (median)
★ Quartile range = third quartile-first quartile = 82-62 = 20



Examples of Japanese Court and Tax Tribunal decision on TP cases 2019.3.22

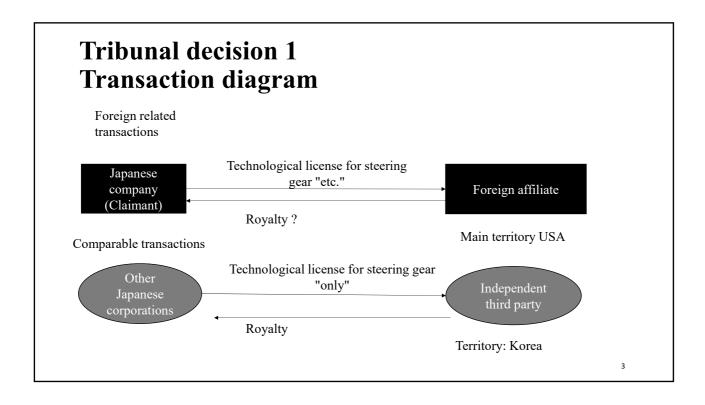
JICA expert Kodera Toshinari

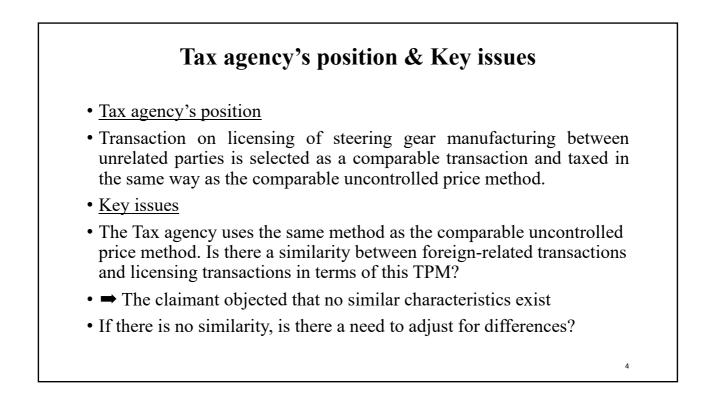
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TP decision of Japanese National Tax Tribunal

- Decision 1 Technology License Transaction (CUP)
- Decision 2 Technology License Transaction (CUP)
- Decision 3 Manufacturing, Sales and Intangible Asset Transaction (RPSM)
- Decision 4 Manufacturing and Sales License Transaction (RPSM)
- Decision 5 Licensing and semi-finished product sales (RPSM)
- Decision 6 Global Trading (RPSM)





Court's fact finding and decision (related to license transaction)

- Regarding the technology issue, the overseas related transactions were for manufacturing steering gears, steering columns, and water pumps, and the comparable transactions were for only steering gear, but the royalty rate was same 3%.
- Regarding territories, foreign-related transactions and comparable transactions are different from each other, such as the United States and South Korea, but the royalty rate of 40% out of approximately 200 US auto parts manufacturing data is 3%, in Korea, 60% of manufacturing data was also 3%.
- Regarding the date of signing the contract, foreign-related transactions were conducted in November 1989, and comparable transactions were conducted in December 1990 and royalty of this manufacturing in most cases was 3%.

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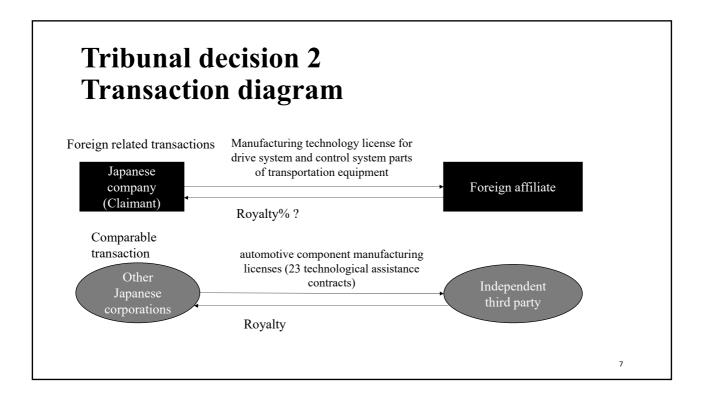
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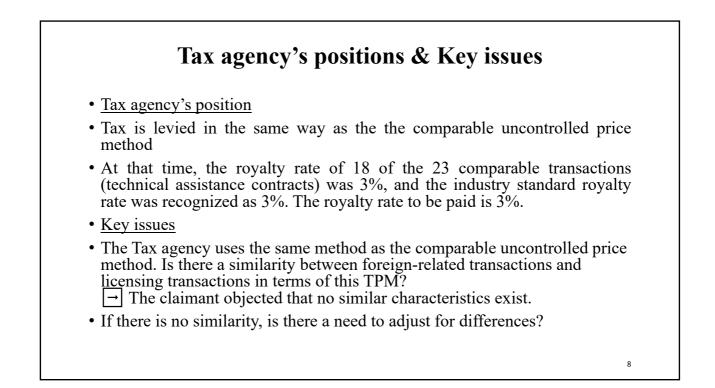
Tribunal conclusions and reasons

Conclusion

There are similarities between foreign-related transactions and comparable transactions. No difference adjustment required.

• Reason?





★Method equivalent to the comparable uncontrolled price method

• Tribunal interpretation

"It is understood that this is a method of estimating arm's length prices by selecting comparable transactions by expanding their scope and inferring from similar intangible asset transactions."

Tribunal's fact finding and decision (related to license transaction)

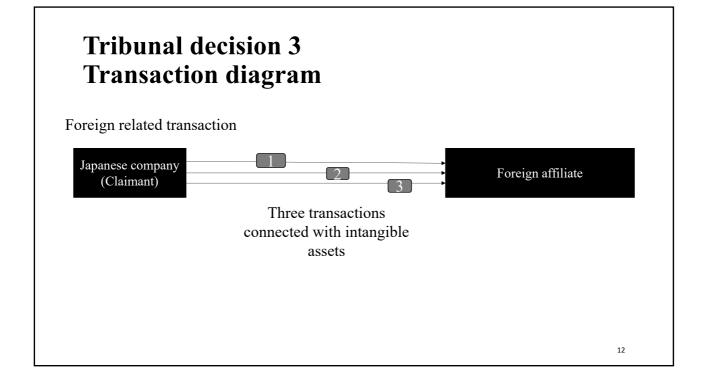
- The rate of 3% is only for 18 out of 23 comparable transactions.
- The technical information provided by the claimant to the foreign related party for the manufacture of parts differs from that of the comparable transaction.
- The types of foreign-related transactions and comparable transactions are different.
- From the above, the reason to use royalty at the rate of 3% is insufficient.
- However, all the comparable transactions selected by the Tax agency are more than 2%.
- In addition, foreign-related transactions and comparable transactions also have the same functions as for drive system components and control system components.

Tribunal conclusions and reasons

Conclusion Foreign-related transactions and the comparable transactions have similarities. No difference adjustment is required. Royalty rate van be 2%.

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• Reason?



Tax agency's positions & Key issues

<u>Tax Agency's position</u>

Taxes on transactions such as manufacturing and sales of electronic components and provision of intangible assets under the residual profit split method

Key issues

① Is TP tax unnecessary because dividends are received from foreign parties?

 \rightarrow Claimant claims that TP tax is not required.

 $\overline{2}$ Is it possible to use three basic methods, such as CUP, RP, and CP?

 \rightarrow The claimant claims that it is a "one transaction."

③ The residual profit split method can used for each transaction?

→ The claimant insists on applying the residual profit split method for each transaction unit.

(4) Is the selection of a comparable company in the calculation of basic profit appropriate?

 \rightarrow The claimant argued that there were some errors in selecting the comparable company.

⁽⁵⁾While R & D expenses were borne by foreign parties, why should it be used as an indicator for splitting claimants?

 \rightarrow The claimant argued that the costs incurred by the foreign-related party should be used as an indicator for the foreign-related party.

Tribunal decision 1 based on fact finding

- (1) In Japan's TP tax system, there is no provision that the TP tax system will not be applied if there is a dividend from foreign parties.
- (2) It is not a "one transaction" that can use the three basic methods and equivalent methods.
- (3) The claimant and the foreign party each have significant intangible assets and these three transactions are related.

Therefore, it is suitable to use the residual profit split method based on total amount of operating profits of the claimant and the foreign related party.

Tribunal decision 2 based on fact finding

(4) Comparable company when calculating basic profits:

"Company that operates similar businesses and have no significant intangible assets from among companies with similar markets and business scales need to be selected".

Companies that should be excluded from comparison are:

- 1) the financial statements of which have significant change in the quantitative characteristics, and
- 2) Information on profit or loss has been publicized for t a short-term only.

Tribunal decision 3 based on fact finding

- (5) Criteria for intangible assets owned by foreign related parties
- 1) Not just legal ownership.
- 2) Consider the contributions of related parties in intangible asset formation activities.

3) Consider the functions performed by related parties in decision-making for intangible assets, provision of services, cost sharing and risk management.

4) Foreign stakeholders should participate in formulating research themes and bear the risks involved in R & D.

5) Therefore, the R & D paid by the foreign-related party is a split indicator for the foreign-related party, not for the Japanese corporation.

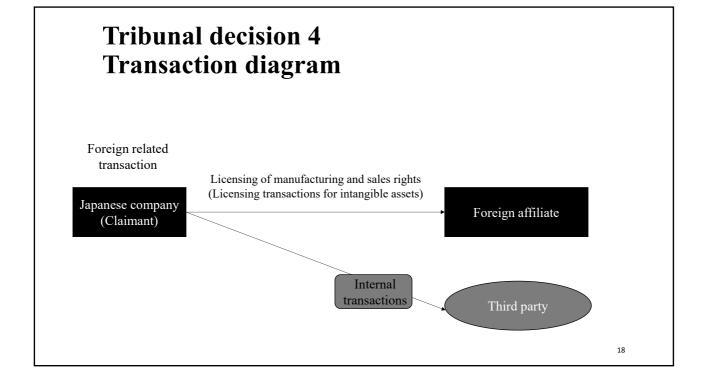
Tribunal conclusions and reasons

Conclusion

Use of Residual split method by the Tax agency is in line with law. The R & D expenses incurred by foreign related party are not splitting a factor for the claimant.

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• Reason?



Tax agency's positions & Key issues

• <u>Tax agency's position</u>

Taxation on manufacturing and sales rights licensing transactions (licensing transactions of intangible assets) using the residual profit split method

• <u>Key issues</u> What is the split factor of the residual profit split method?

Tribunal decision based on fact finding

(1) The claimant insists on the application of the "method equivalent to the comparable uncontrolled price method" to the internal transaction as the comparable transaction.
② Regarding internal transactions and foreign-related transactions, intangible assets in licensing are of the same type.

(3) However, the conditions for license are different. That is, 1) license start time, 2) license period, 3) license condition, 4) whether there is technician accompanying license, or not, and

5) The sales area that is allowed to use is different in contract and in reality.

(4) These will have an impact on ALP (royalty rate).

(5) The claimant has not proven that these have no effect on ALP.

(6) Taking so-called "excessive labor cost" (= annual labor cost-average labor cost of the related manufacturing industry) of the person in charge of the intangible asset formation as the division factor by the tax office is reasonable.

Tribunal conclusions and reasons

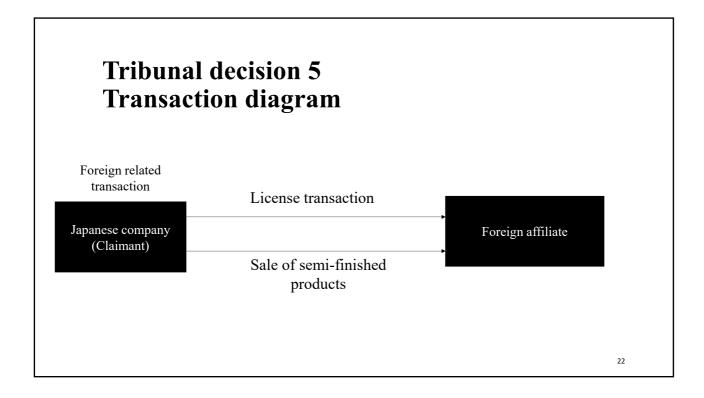
Conclusion

Use of Residual split method by the Tax agency is in line with law.

The internal transaction claimed by the claimant cannot be a comparable transaction.

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• Reason?



Tax agency's positions & Key Issues

• <u>Tax agency's position</u>

Taxes on licensing transactions and sales of semi-finished products have been imposed based on the residual profit split method <u>Key issues</u>

(1) Should license transactions and semi-finished product sales transactions be treated as separate transactions?

 \rightarrow Taxpayers argue that this should be a separate transaction.

② Should a method equivalent to the comparable uncontrolled price method be applied?

 \rightarrow Taxpayers claim this method.

③ Should the residual profit split method be applied?

Tribunal decision 1 based on fact finding

(1) Semi-finished products include some of the know-how related to the production of licensed products. The licensee, who is foreign related party is obliged to purchase the semi-finished product from the claimant. Therefore, it can be said that even in semi-finished products transactions, the consideration for licensing of intangible assets has been recovered, so the licensing transactions and semi-finished product sales transactions are integrated and the ALP calculation is not possible.

(2) For these transactions 1) intangible assets are of the same type, but 2) license patents and the scope of "technological information" are different. 3) Licensed products are different in composition. 4) Sales and the market situation is different. Thus, there is no similarity between the two transactions.

 \Rightarrow Then, the method equivalent to the comparable uncontrolled price method cannot be applied.

Tribunal decision 2 based on fact finding

(3) Selection of comparable transactions for calculating the basic profit

Claimant: Although foreign parties do not require sophisticated and largescale equipment, the Tax agency has selected large-scale equipment corporations and companies with different products to be compared by the SIC code.

Tribunal: 1) The SIC code selected by the Tax agency is not reasonable. 2) Since the residual profit split method uses the operating profit

margin, it is less sensitive differences in

transactions (product) than the gross profit margin.

Tribunal decision 3 based on fact finding

④ Regarding the splitting factors of the residual profit splitting method Claimant: Foreign-related parties have a "Sales Department", a 24-hour business

support team, which greatly contributes to the formation of intangible

assets.

Tribunal: The activities of the sales department are auxiliary.

 (5) About the splitting factors of the residual profit method Tax Agency: The cost of the legal department of the claimant is also a factor. Tribunal: The costs of the Legal Department include the costs of dealing with unrelated parties, which should be deducted from the cost of the splitting factor.

Tribunal conclusions and reasons

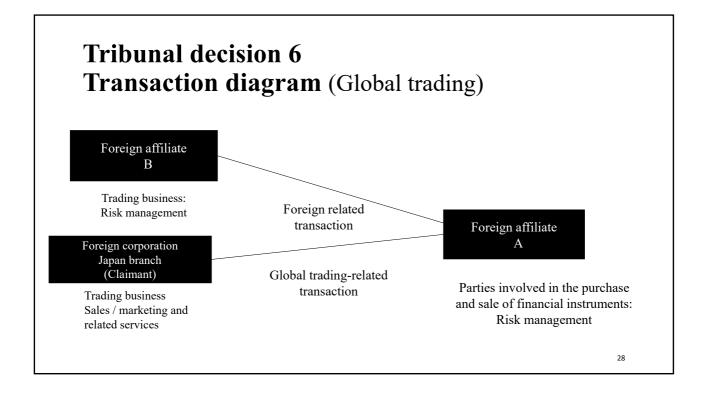
• Conclusion

Use of Residual split method by the Tax agency is in line with law.

However, there are some errors in the division factor of the Tax agency, decision of the tax agency is considered to be invalid.

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• Reason?



Tax agency's positions & Key Issues

Tax agency's position

Tax on global trading using residual profit split method

Key issues

① Is it possible to apply a method equivalent to the three basic methods or a method equivalent thereto?

② Is the residual profit split method applicable?

Tribunal decision based on fact finding

(1) Since a comparable transaction could not be found, a method equivalent to the Basic 3 Method and a method equivalent to the Basic 3 Method cannot be applied as the TPM.

(2) In this case, the primary profits in the primary profit distribution are those that are deemed to contribute less to profits than trading and risk management activities.

Within the second profit distribution 1) trading business and 2) risk management business make residual profit.

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Tribunal conclusions and reasons

• Conclusion

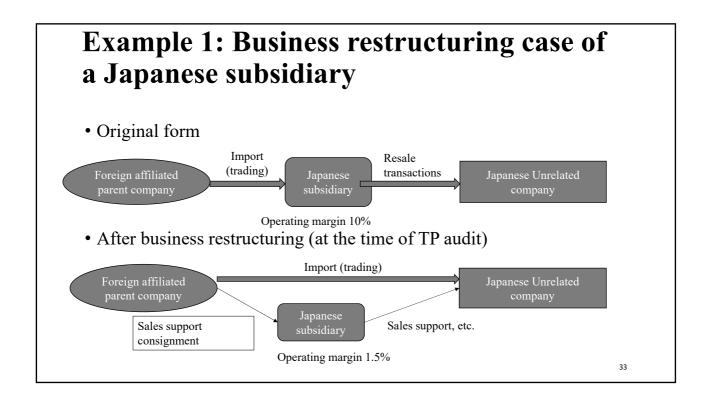
Use of Residual split method by the Tax agency is in line with law.

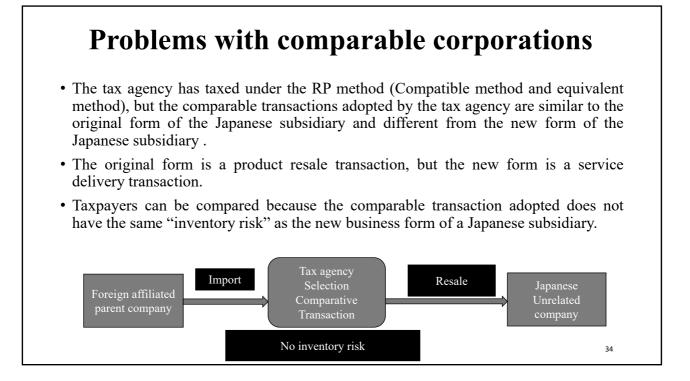
Take trader labor costs and capital procurement costs as splitting factor.

• Reason?

The most important point of Japanese TP case

- Case 1 Business Restructuring Case (RP)
- Case 2 RPSM Basic Profit / Comparable Company Case (RPSM)
- Case 3-Estimated tax case (estimated tax)





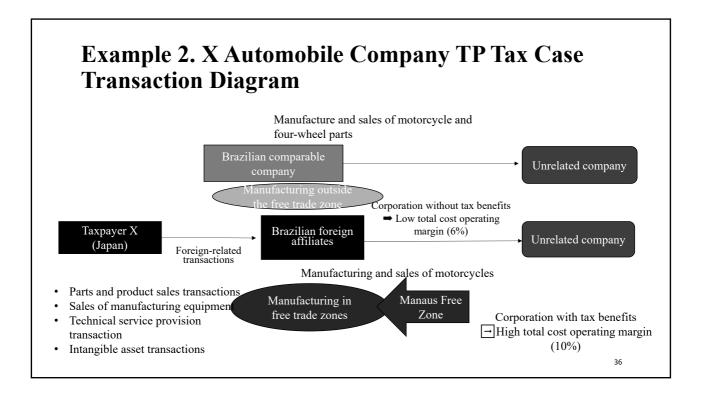
Restructuring Issues and BEPS

- This is a typical case of BEPS
- There is usually no such service transaction between the independent companies as in the Foreign-related Transaction.
- Therefore, the High Court said that if the functions and risks were emphasized, the comparable company selected by the tax agency and the Japanese company would not be comparable (the district court considered comparable).
- BEPS suggests the following two considerations in this case: (1) Use the PS method (however, there is a problem with the division factor)

(2) The new type of Japanese corporation is considered as a foreign agent's representative PE.

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➡ Proposed extension of PE definition in Article 5 of the OECD Model Convention



Tax agency's positions & Key Issues

Tax agency's position

Taxes motorcycle inventory-related transactions, which are inventories, using the residual profit split method

Of this TPM, the "gross operating profit margin method" was used, in which the average value of gross operating profit margin of the selected comparable transaction was the Brazilian basic profit margin.

This basic rate of return x [total cost of foreign affiliates-cost that is an indicator of the value of significant intangible assets spent by foreign affiliates] = basic benefit of Brazilian foreign affiliates.

Key issues

① Can be the multiple transactions "one transaction"?

(2) Is the application of the residual profit split method a violation of taxation concept?
 (3) Is there any comparability between the foreign related party and the comparable company in the basic profit calculation?

 \rightarrow ③ is the most important issue! ! !

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Most important issue: Whether selection of comparable company for calculating basic profits in RPSM has been done correctly?

- Phase 1 of RPSM: Calculating Basic profits
 It is assumed that a comparable company that can be compared is selected
- In this case, the Tax agency has selected company outside the Manaus Free Zone which is near Sao Paulo, as comparable.
- The court stated, "Most of operating profits of the Brazilian foreign related party is largely attributable to Manaus' tax benefit. Therefore, the company can not be compared with this foreign related party."

Comparison of operating margin (OMR) (example)

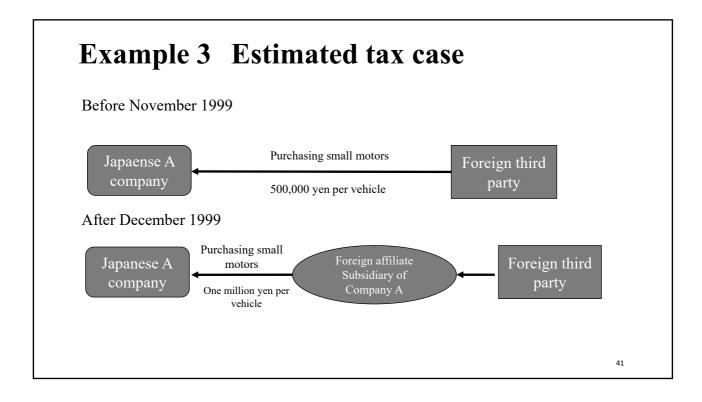
- OMR for Japanese parent company's transaction with a Brazilian subsidiary: 7%
- OMR for transactions of a Brazilian subsidiary with a Japanese parent company: 20%
- Average OMR of Brazilian companies belonging to the Manaus Free Zone to which the Brazilian subsidiary belongs: 18%
- Average OMR of companies outside the Manaus free zone: 6%

Q. What if the Tax agenvy selects a company in the Manaus Free Zone as a comparable company of a Brazilian subsidiary in the calculation of basic profit in RPSM?

A There were almost no residual surpluses above basic profits.

Case explanation advocator Shuji Sato's opinion

- "Manaus is a city in the Amazon basin, far away from Sao Paulo, Brazil's economic center. Here, in accordance with the Constitution, there are tax incentives as a free zone for attracting foreign business entities, and in addition to the business entities mentioned here, several entities are also located in this region. It is important to note that companies in these regions should have the same operating margin ratio (OMR) as Sao Paulo, etc. I guess it was impossible. "
- "In that sense, this decision seems to be an important precedent, not only in the context of transfer pricing taxation, but also as an example of a court showing a sensible solution."



TP tax audit

- The Tax agency conducted a tax audit of Company A and found that the purchase price had doubled.
- The head of Tax agency has requested Company A to provide Company A's financial statements and supporting documents for the price calculation of the transaction in accordance with laws and regulations, but Company A did not provide these documents.
- Therefore, the head of Tax agency selected three corporations engaged in with similar business based on non-public information, and adjustments have been made considering the price calculated in accordance with Articles 66-4-7 of the Law on Special Measures as the ALP (actual price).

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• Company A did not accept this kind of taxation, considered the ALP unreasonable, and asked these measures to invalid.

Significance of Tokyo District Court's decision, 1 December 2011

- Estimated taxation and TP taxation have been recognized first time.
- "The purpose of Article 66-4 (currently sections 8 and 9) of the Special Taxation Measures Law is to ensure that taxpayers present or submit books and other documents that are the basis for calculating ALP in foreign-related transactions."
- "In the event of non-cooperation, if the tax authorities do not take any action, they will not be able to ensure the fairness of the tax system, therefore, it uses the estimated taxation system."
- "... taxpayers will be subject to estimated taxation if he/she does not submit a document that can be prepared and re-issued even if taxpayers are not available at the time"
- "The same kind of business is not strictly required."
- "In addition, the wording of paragraph (6) (currently sections 8 and 9) does not specify that corporations engaged in related party transactions should be excluded when selecting corporations with similar businesses."

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Estimated TP taxation (Summary of Article 66-4 6 (currently sections 89) of the Special Measures Law)

- If the relevant corporation does not present or submit documents or copy thereof required by the NTA, tax inspector in connection with controlled transactions for the reporting period and specified in the Regulation for calculating ALP, issued be the MOF, head of tax agency may consider price calculated by following method as actual price and make an adjustment.
- This method is based on the gross profit of a transaction similar to a controlled transaction of a legal entity in terms of volume and content, or equivalent percentage established by law.

Curriculum of Advanced International taxation training

2019/8/26-2019/8/30

	8/26	8/27	8/28	8/29	8/30
	Mon	Tue	Wed	Thu	Fri
(9:00-12:00)	Pre-test Comparability adjustments in transfer pricing surveys	Transfer pricing (Comparability adjustments)	Transfer pricing (Comparability adjustments)	Transfer pricing (Comparability adjustments)	Q&A
	Tajino, Ishiguro	Tajino, Ishiguro	Tajino, Ishiguro	Tajino, Ishiguro	Tajino
(13:00-16:00)	Comparability adjustments in transfer pricing surveys	Transfer pricing (Comparability adjustments)	Transfer pricing (Comparability adjustments)	Summary discussion Post test	Q&A
	Tajino, Ishiguro	Tajino, Ishiguro	Tajino, Ishiguro	Tajino, Ishiguro	Tajino

Name of Inspectors

No	Name	Affiliation
1	Ch.Erdenechimeg	Senior tax inspector, Tax Administration and Cooperation Department, GDT
2	Kh.Suvd-Erdene	Tax inspector, Tax Administration and Cooperation Department, GDT
3	B.Ariunchimeg	Tax inspector, Tax Administration and Cooperation Department, GDT
4	N.Jargaltsetseg	Tax inspector, Taxpayer Relations Department, GDT
5	J.Tserentsoo	Tax inspector, Taxpayer Relations Department, GDT
6	G.Enkhjin	Tax inspector, Tax Revenue Department, GDT
7	Ts.Bayarmaa	Tax inspector, Internal Audit Department, GDT
8	Sh.Undraa	Tax inspector, Training Center, GDT
9	N.Tuul	Tax inspector, Training Center, GDT
10	B.Batchimeg	Tax inspector, Taxpayer Relations Department, GDT
11	S.Gunjinlkham	Tax inspector, Taxpayer Relations Department, GDT
12	S.Tugsjargal	Senior tax inspector, Mining and International Taxation Division, SBRAD
13	Ts.Delgermaa	Tax inspector, Mining and International Taxation Division, SBRAD
14	G.Byambasuren	Tax inspector, Mining and International Taxation Division, SBRAD
15	D.Batjargal	Senior tax inspector, Tax Audit and Methodology Division, SBRAD
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19	N.Khandkhuu	Tax inspector, Tax Audit and Methodology Division, SBRAD
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25	G.Banzragch	Tax inspector, Tax Revenue Division, SBRAD
26	Kh.Altankhuu	Tax inspector, Administration Division, SBRAD
27	O.Tsend-Ayush	Tax inspector, Tax Audit and Methodology Division, Capital City Tax Office
28	J.Erdeneburen	Tax inspector, Administration Division, Capital City Tax Office
29	L.Davaasuren	Tax inspector, Bayazurkh District Tax Office
30	Ch.Lkhamragchaa	Tax inspector, Chingeltei District Tax Office
31	D.Solongo	Tax inspector, Sukhbaatar District Tax Office
32	S.Naranbaatar	Tax inspector, Dornod Province Tax Office
33	D.Narantsetseg	Head of Public Administration and Management division, Capital City Tax
		office
34	S.Duubayar	Tax inspector, Umnugovi Province Tax Office
35	B.Ariungerel	Tax inspector, Risk Management Division, GDT
36	L.Munkhtuul	Tax inspector, Tax Administration and Cooperation Department, GDT
37	Ts.Ishjamts	Tax inspector, Tax Audit and Methodology Division, SBRAD

Comparability Adjustments

August 26-30, 2019 Prof. Hideaki ISHIGURO Prof. Mikio TAJINO

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Contents

- I Comparability Adjustments
- II Case study
- III Q&A

I Comparability Adjustments

1. Flow of Transfer Pricing audit

- Selection of target corporation for audit
 Select the target corporation using Local File etc.
- (2) Pre- audit survey

Gather industry information, review financial information, etc.

- (3) Launch an auditUnderstanding the status of foreign-related transactions
- (4) Examine problem transactions

Identify the TPM and the entity to be examined, considering the functions and risks

(5) Selection of transactions for comparison

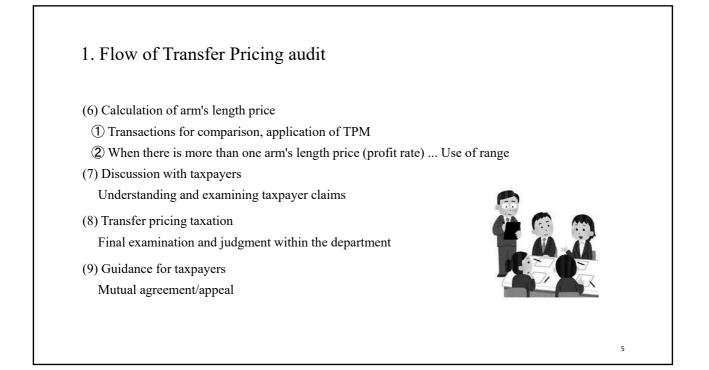
① Internal comparable transactions

(2) External comparable transaction (corporate): Utilization of public database Comparability analysis (quantitative analysis / qualitative analysis), comparability adjustment



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2. Five elements of comparability (OECD TPG para 1.36)

(1) Terms and conditions of the transaction

(2) The assets used by each party, the risks assumed and functions to be permormed, as well as the circumstances surrounding the transaction and industry practices

- (3) Features of transferred assets and services provided
- (4) Economic situation of the parties and the markets in which they operate
- (5) Business strategies adopted by the parties



3. About comparability adjustments

(1) Purpose of comparability adjustment

By performing the adjustment, the comparability (the reliability of the result) is improved.

(2) Necessity of comparability adjustments

It is implemented when when there is a significant difference between the foreign-related transaction and the comparable transaction that has a significant effect on price or profit margin, and an accurate adjustment can be made.

① Differences exist, but do not affect price or profit margin

➡ No comparability adjustment required

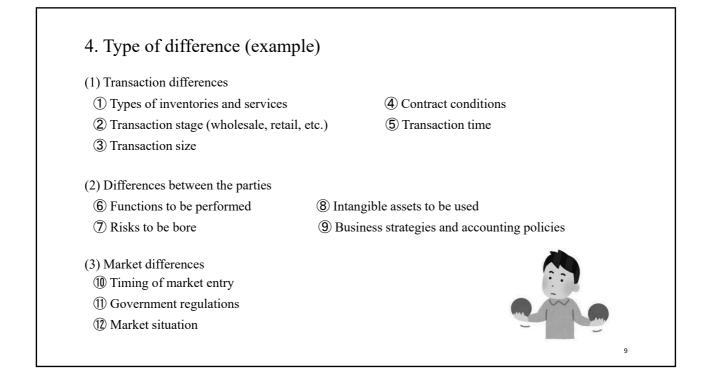
(2) Differences that have a significant effect on price or profit margin, but cannot be adjusted to a reasonably accurate degree

➡ Problem with comparability

3. Comparability adjustments [reference]

- (1) Comparability means that the differences (if any) between the compared situations do not have a significant effect on the condition being verified, or eliminate the effects of such differences. This means that a fairly accurate adjustment is possible. (OECD TPG para 3.47)
- (2) Difference adjustment should be considered (and only then) when it is believed that it will improve the reliability of the results. (OECD TPG para 3.50)
- (3) It should be emphasized that only adjustments for differences that have a significant effect on comparisons are appropriate. There will always be some differences between taxpayer related party transactions and third party comparable transactions. If differences do not significantly affect the reliability of the comparison, the comparison may be appropriate even with unadjusted differences. However, the need for a number of adjustments or significant adjustments to key comparability factors may indicate that the third-party transaction is in fact not sufficiently comparable. (OECD TPG para 3.51)

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(1) Differences in trade terms

In international transactions, trade conditions such as CIF (fare and insurance premiums) and FOB (vehicle delivery) are often used, but if differences in these conditions affect prices, it is necessary to adjust for differences.

Differences in trade terms are adjusted in terms of the price of the traded product if the comparable transaction is conducted under the same trade terms as the foreign-related transaction.

(2) Difference in settlement conditions

In general commercial transactions, if the payment of the product is made for a long time, the amount of interest corresponding to the period will be added and the price of the product will increase, so if the difference in the settlement conditions affects the price, adjustment is necessary.

The difference in settlement conditions is adjusted from the viewpoint of what the price of the traded product would be if the comparable transaction was conducted under the same settlement conditions as the foreign-related transaction.

(3) Difference in transaction size

In general commercial transactions, discounts and rebates may be performed if the transaction volume is large, and if discounts and rebates affect prices, adjustments for differences are required. For example, if the contract terms of the comparable transaction include discounts and rebates depending on the transaction volume, adjust the quantity of the overseas-related transaction to the conditions of the comparative transaction.

(4) Functional differences

If there is a difference in functions and the difference affects the profit margin, it is necessary to adjust the difference.

For example, the effect of differences in functions (such as advertising) can be measured by the amount of expenses paid by parties to foreign-related transactions and comparable transactions, or the effect of such differences on profit margins can be removed from financial data. You have to make adjustments.

5. Specific examples of comparability adjustment

(5) Differences in inventory valuation methods

If the commodity price is significantly rising (Inflation) or falling (Deflation), it is necessary to adjust the difference because the difference in the inventory valuation method affects the profit margin. For example, when commodity prices are rising, applying LIFO (last-in first-out) will result in less inventory and higher cost of sales than FIFO (first-in first-out). Therefore, the profit margin is low. Adjustments are made by applying the valuation method applied by the verified entity to the comparable entity.

[Reference] Relationship between FIFO / LIFO and cost of sales

	FIFO	LIFO
Inflation	Inventory : Many Cost of sales : Small	Inventory : small Cost of sales : many
Deflation	Inventory : small Cost of sales : Many	Inventory: Many Cost of sales: small

(6) Difference in working capital (OECD TPG para 3.49)

As already mentioned in "(2) Differences in settlement conditions", differences in the timing of payment for goods usually affect prices. However, it is difficult to grasp such differences in public data. Therefore, a commonly used adjustment method is an adjustment called "Working Capital Adjustment" (Note). The working capital adjustment is generally made using three accounts in the balance sheet: (1) accounts receivable, (2) accounts payable, and (3) inventory. The reason is as follows.

(1) Accounts receivable adjustment

Generally, if the collection period of a product is long, the price corresponding to the interest rate will be included in the price, so the longer the collection period, the higher the selling price and the higher the profit margin. The effect on prices can be measured by the ratio of accounts receivable (average accounts receivable during the period divided by sales).

2 Accounts payable adjustment

Though the concept is similar to accounts receivable, in the case of accounts payable, the longer the payment period, the higher the purchase price and the lower the profit margin. The effect on prices can be measured by the ratio of accounts payable (average accounts payable during the period divided by cost of sales).

(Note) The working capital adjustment is sometimes called Asset Intensity Adjustment.

5. Specific examples of comparability adjustment

(6) Difference in working capital

③ Inventory adjustment

Generally, holding a large amount of inventory is considered to improve the profit margin from the following advantages (Merit).

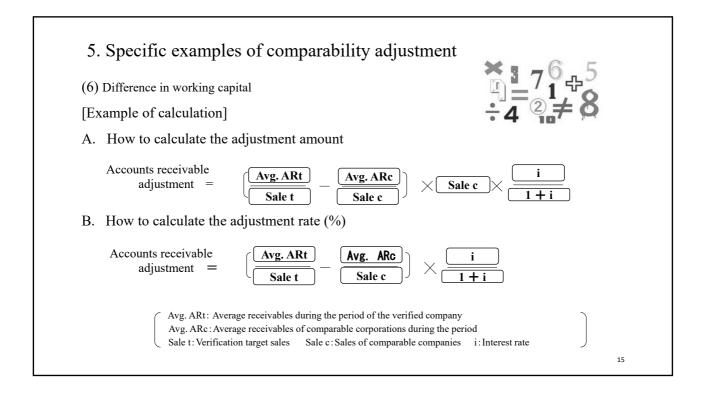
1) Purchase a large amount of products from suppliers, so you can receive a discount (Volume Discount)

2) Receive a premium because you can respond quickly to large orders from customers On the other hand, a large inventory may mean that you have a defective inventory, so careful

consideration is required when using it. The effect on price can be measured by the ratio of inventory assets (average inventory assets during the period divided by sales).

(Interest rate used for adjustment)

Short-term interest rates are used for adjustment. Since the amount of receivables and accounts payable includes the amount corresponding to interest rates, and it is necessary to exclude the amount equivalent to interest rates from the amounts, use "interest rate / (1 + interest rate)" for adjustment. On the other hand, inventory assets do not include interest equivalents and are considered to generate profits themselves. Therefore, interest rates are generally used as they are.



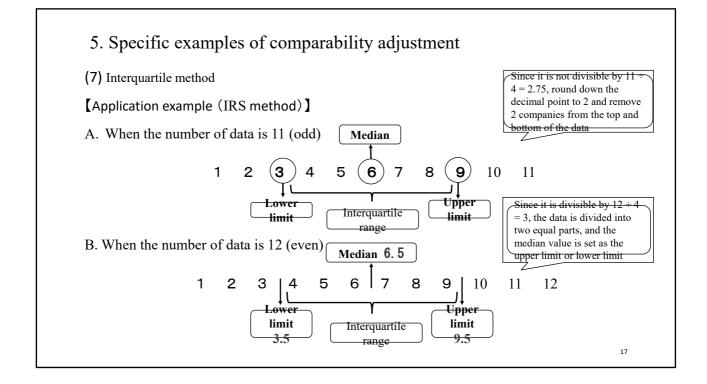
(7) Interquartile method (OECD TPG para 3.57)

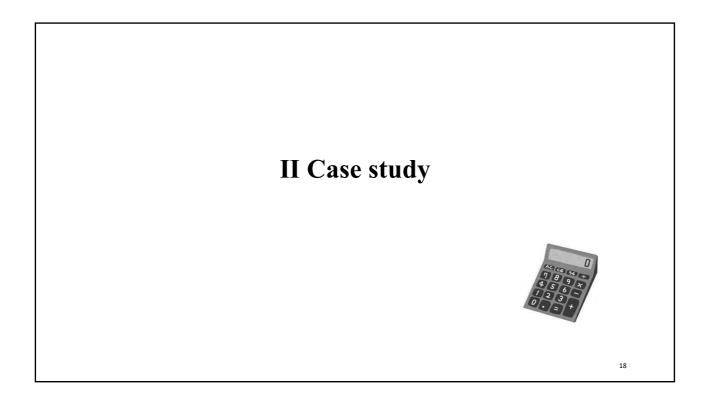
If there are still differences that are difficult to quantify quantitatively even after adjusting for differences as described above, and it is deemed that the differences will have a minimal effect on the profit margin, use the quartile method. It is effective to use.

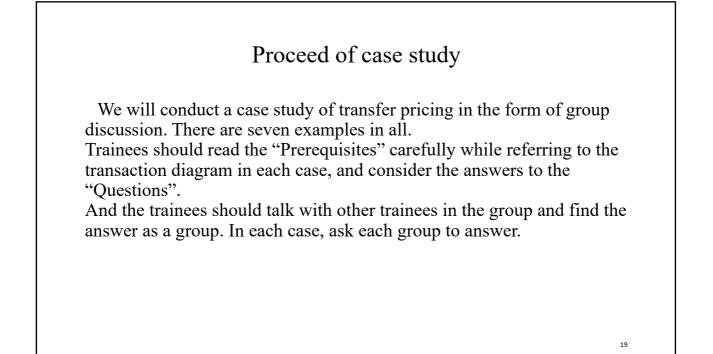
The quartile method is a statistical method for improving comparability. Specifically, the data is rearranged in ascending order, divided into four equal parts, data within 25% of the upper and lower parts are removed, and a range is created with the remaining data for analysis. This range is called an inter-quartile range.

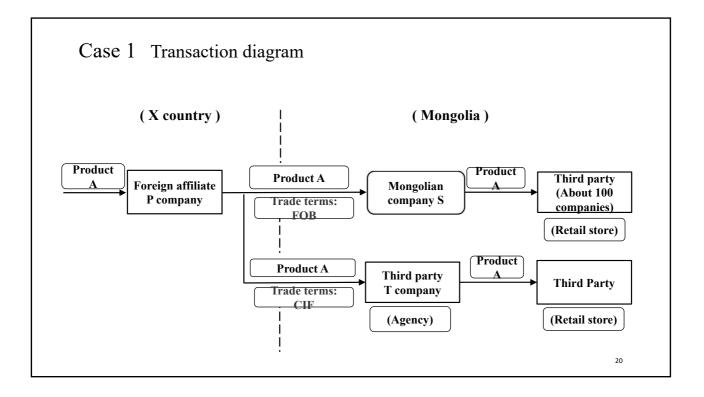
In general, the quartile method uses a transfer pricing method (TPM) that uses the profit rate of the comparable company as a profit level indicator (PLI), and the number of comparable companies is at least a certain number (at least 8) Sometimes used.

In the analysis using the quartile method, it is generally considered that there is no problem in transfer pricing if the profit ratio of the verified company is equal to or greater than the lower limit of the interquartile range created by the profit ratio of the comparable company. You. On the other hand, when the value is below the lower limit, adjustment is often performed up to the median (Median) of the quartile range.









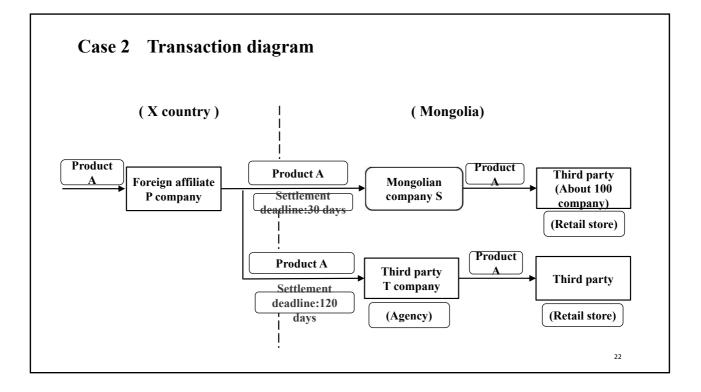
Case 1 Differences in trade terms

[Precondition]

- 1. Company P in country X is a company that sells product A, and founded company S in Mongolia 10 years ago as a subsidiary that sells product A.
- 2. Company P sells product A to company S at a price of \$ 100,000 (term of trade: FOB), and company S sells them to about 100 third-party retailers in Mongolia.
- 3. Prior to the establishment of Company S, Company P sold Product A to Mongolia's third-party agent Company T at a price of \$ 100,000 (trade conditions: CIF), and Company T sold them to retailers in Mongolia. Sold to.
- 4. Except for trade terms, there is no significant difference between the transaction between Company P and Company S and the transaction between Company P and Company T except for the terms of trade.
- 5. When P Company sells Product A to T Company, the marine freight rate is 4% of the unit price and the marine insurance premium rate is 0.5%.

[Question]

- 1. In the transfer pricing survey for Company S, how to adjust the difference when applying the CUP method with the transaction of Product A between Company P and Company T as the comparable transaction?
- 2. What is the arm's length price of product A?



Case 2 Settlement terms difference

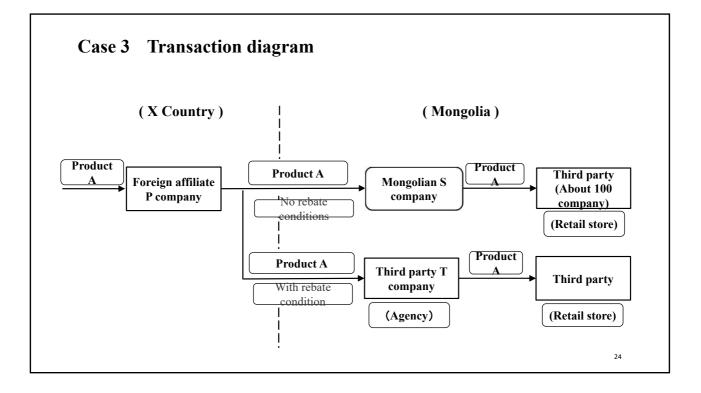
[Precondition]

- 1. Company P in country X is a company that sells product A, and founded company S in Mongolia 10 years ago as a subsidiary that sells product A.
- 2. Company P sells Product A to Company S for \$ 100,000 (settlement deadline: 30 days), and Company S sells them to about 100 third-party retailers in Mongolia.
- 3. Prior to the establishment of Company S, Company P sold Product A to Mongolia's third-party agency Company T for a unit price of \$ 100,000 (settlement deadline: 120 days), and Company T sold them to stores in Mongolia.
- 4. Except for the settlement conditions, there is no significant difference between the transaction between Company P and Company S and the transaction between Company P and Company T, except for the settlement conditions.
- 5. Company P applies a Usance Rate at a financial institution of 5% per annum.

[Question]

- 1. In the transfer pricing survey for Company S, how to adjust the difference when applying the CUP method with transactions between Company P and Company T as comparable transactions?
- 2. What is the arm's length price of product A?

23



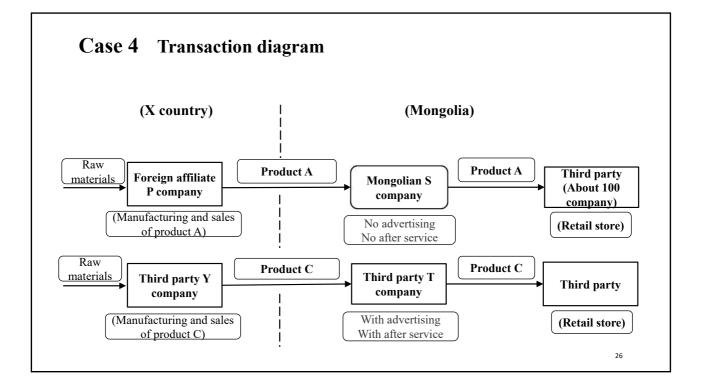
Case 3 Transaction size difference

[Precondition]

- 1. Company P in country X is a company that sells product A, and founded company S in Mongolia 10 years ago as a subsidiary that sells product A.
- 2. Company P sells product A to company S for \$ 10,000, and company S sells them to about 100 third-party retailers in Mongolia.
- 3. Prior to the establishment of Company S, Company P sold Product A to Mongolia's third-party agent Company T for \$ 10,000, and Company T sold them to retailers in Mongolia.
- 4. The transaction between Company P and Company T is subject to a 10% rebate if the transaction volume per year exceeds 1,000 pieces. Other conditions are the same as those between Company P and Company S.
- 5. In FY2018, Company S purchased 1,250 products and Company T purchased 1,500 products A from Company P.

[Question]

- 1. In the transfer pricing survey for Company S, how to adjust the difference when applying the CUP method with transactions between Company P and Company T as comparable transactions?
- 2. What is the arm's length price of Product A in FY2018?



Case 4 Functional differences

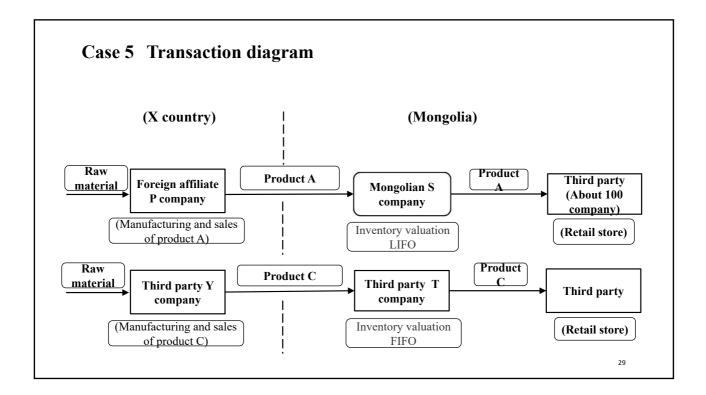
[Precondition]

- 1. Company P in country X is a company that sells product A, and established company S in Mongolia 10 years ago as a subsidiary that sells product A.
- 2. Company P sells product A to Company S, which sells them to about 100 third-party retailers in Mongolia.
- 3. Company S does not advertise Product A in Mongolia and does not provide after-sales services (repairs, parts replacement, etc.). (Advertising for product A in Mongolia is carried out by company P.)
- 4. Mongolian corporation T, as an independent agent, imports product C from Y, a third party in country X, and sells it to third-party retailers in Mongolia.
- 5. Company T carries out advertising and promotion of Product C in Mongolia and provides aftersales service of Product C for a fee.
- 6. The product A and the product C have different properties, structures, functions, etc., but both are industrial machines.
- 7. The following table shows the profit and loss statement of Company S and Company T in FY2018.

Case 4 Profit and loss statement (2018) (Unit: US \$) S company T company Amount of sales 1, 200, 000 2,000,000 (Including after-sales service sales) (0) (80,000) Cost of sales 700, 000 1,000,000 (Including after-sales service costs) (0) (30,000)500.000 Gross profit 1,000,000 Selling, general and administrative expenses 452,000 850,000 (Including advertising expenses) 0) (20,000) 48,000 150,000 Operating income

[Question]

- 1. How to adjust the difference when applying TNMM with T as a comparable company in the transfer pricing survey for S.
- What is the percentage of operating profit margin (OM) for Company T in FY2018 as a result of the difference adjustment?

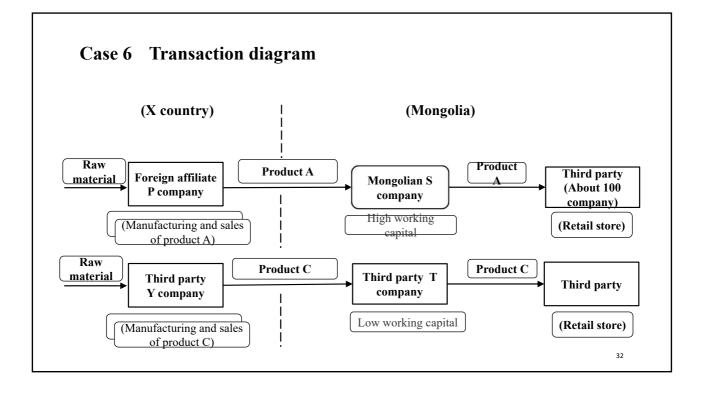


Case 5 Differences in inventory valuation methods

[Precondition]

- 1. Company P in country X is a company that sells product A, and founded company S in Mongolia 10 years ago as a subsidiary that sells product A.
- 2. Company P sells product A to Company S, which sells them to about 100 third-party retailers in Mongolia.
- 3. Mongolian corporation T, as an independent agent, imports product C from Y, a third party in country X, and sells it to third-party retailers in Mongolia.
- 4. The product A and the product C have different properties, structures, functions, etc., but both are industrial machines.
- 5. Company S adopts LIFO (last-in first-out method) and Company T adopts FIFO (first-in first-out method) as an inventory valuation method.
- 6. The following table shows the company's cost of sales data for FY2018.

	(Unit : US\$)
FIFO	When LIFO is applied
20, 500	21, 000
11, 000	19, 500
340, 000	?
or Company S, when applying TN djust for differences in inventory	
	20, 500 11, 000 340, 000 or Company S, when applying TN



Case 6 Working capital difference

[Precondition]

- 1. Company P in country X is a company that sells product A, and founded company S in Mongolia 10 years ago as a subsidiary that sells product A.
- 2. Company P sells product A to Company S, which sells them to about 100 third-party retailers in Mongolia.
- 3. Mongolian corporation T, as an independent agent, imports product C from Y, a third party in country X, and sells it to third-party retailers in Mongolia.
- 4. The product A and the product C have different properties, structures, functions, etc., but both are industrial machines.
- 5. The levels of working capital (accounts receivable, payable and inventories) for S and T are significantly different, and reconciliation of these differences was found to be effective in increasing comparability.
- 6. Financial data such as sales and working capital for companies S and T in FY2018 are shown in the following table.
- 7. In FY2018, Company S's bank borrowing rate was 5%.

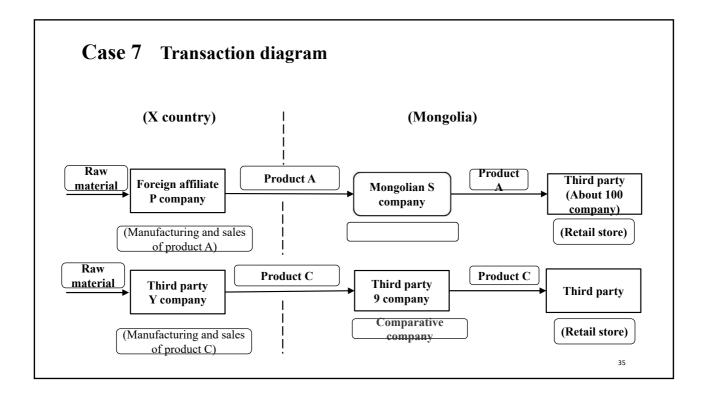
(Unit : US\$)

Case 6 Financial data (2018)

	S company	T company
amount of sales	1, 800, 000	2, 000, 000
Operating income	72, 000	100, 000
Operating margin (OM)	4%	5%
Accounts receivable (starting balance)	420, 000	150, 000
<i>II</i> (Ending balance)	480, 000	170, 000
Accounts payable (starting balance)	390, 000	125, 000
" (Ending balance)	330, 000	115, 000
Inventories (starting balance)	550, 000	180, 000
<i>II</i> (Ending balance)	530, 000	220, 000

[Question]

- 1. How to adjust working capital differences when applying TNMM as a comparable transaction in the transfer pricing survey for Company S
- What is the percentage of operating profit margin (OM) of Company T in FY2018 as a result of the difference adjustment?

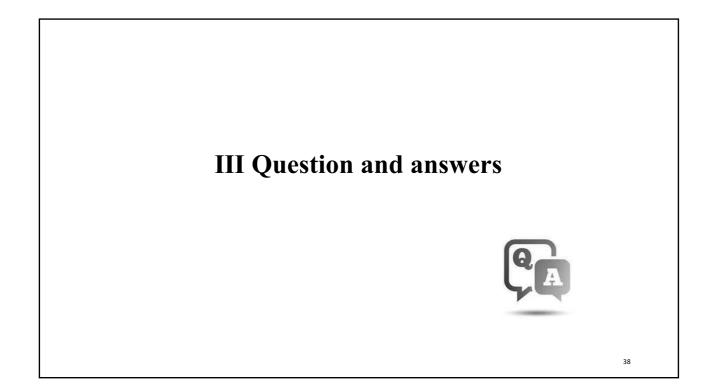


Case 7 Quartile

[Precondition]

- 1. Company P in country X is a company that sells product A, and founded company S in Mongolia 10 years ago as a subsidiary that sells product A.
- 2. Company P sells product A to Company S, which sells them to about 100 third-party retailers in Mongolia.
- 3. There are nine independent legal entities in Mongolia that perform similar functions as Company S.
- 4. The products handled by these nine companies are various, and although the properties, structure, functions, etc. are different from those of Product A, all are industrial machines.
- 5. Investigator Q of the Mongolian National Tax Service decided to apply the TNMM to these nine companies as a comparative company and a company to be verified in a transfer pricing survey to company S.
- 6. After examining the nine companies in detail, Mr. Q found that there were some differences that were perceived as affecting operating margin (OM).
- 7. For this reason, Mr. Q made use of the methods listed in Case 1 to Case 6, and adjusted for those differences that seemed important. However, minor differences that were difficult to grasp quantitatively could not be adjusted.
- 8. The following table shows the OM of nine companies after adjusting for differences from company S in FY2018.

1D company6.392E company5.883F company5.364G company4.845H company4.626I company3.79	
3 F company 5.36 4 G company 4.84 5 H company 4.62	
4G company4.845H company4.62	
5 H company 4.62	
6 I company 3.79	
7 J company 2.83	
8 K company 2.31	
9 L company $\triangle 0.45$	
- S company 2.18	



Technical cooperation deliverables

Investigation and analysis report on international taxation implementation system

International tax administration in Mongolia, current status of international tax examinations, and recommendations

July 2018 JICA Expert Kodera Toshinari

The following is a proposal for international tax administration and international tax examinations in Mongolia. The basic philosophy of the proposal is that it is necessary to continuously cultivate specialized human resources and build a specialized division for all work fields even in limited human resources to revitalize the organization, deepen tax theory, and grow practical research ability. The core of the proposal is "training professional familiar with the industry" from the viewpoint of organizational and research capabilities.

1. International tax administration and international tax examination

Current status of international tax administration and international tax examination at each department of GDT, future problems and recommendations

(Current status)

Under the head of the GDT tax administration cooperation department, the international tax administration as a whole is managed, including information exchange, mutual agreement, and international tax system development. The tax audit department of the GDT is responsible for directing and supervising the overall GDT work related to the examination. In addition, the department conducts instruction for international tax examination of district tax offices. The State budget revenue and control department of the GDT is responsible for large scale corporate international examination. The Legal Department of the GDT has also assigned an international tax officer. In addition, the training center is trying to reinforce laws and regulations and strengthen international training.

(Problems and recommendations of each department)

1. Tax Administration and Cooperation Department, GDT (corresponds to NTA General Affairs Division of Japan, International Office)

The Tax Administration and Cooperation Department, GDT has been working to further enhance international taxation by establishing a new policy implementation and international taxation section in January 2016. Although it was developed under the leadership of the director, this makes clear the international tax examination mechanism and understanding the international taxation theory within this department. *

Currently, the department has three main divisions: A) in charge for tax administration, B) in charge for tax law amendment, and C) in charge for international issue. A) consists of 1

chief inspector, 3 inspectors, B) 1 chief inspector, 2 inspectors, C) 1 chief inspector, and 4 inspectors.

However, the issue is that there is no specialist in charge of mutual agreement. It seems better to be independent from the person in charge in C) above. Mutual agreement on transfer prices, is actual negotiations based on the Tax treaty and require specialized skills. In addition, it is necessary to contact the MOF with the opinions of international tax planning as seen from the GDT in a timely and specific manner, and to consider establishing a new section for general affairs to share information. There should be legislative proposals from each standpoint, not only from the Tax Administration and Cooperation Department, but also from the tax examination policy department, the LTO department, the Legal Affairs department and the Training Center. A general affairs section should be in charge to unify these opinions on revision of international taxation and transfer the information to the MOF.

In light of the above, it is necessary to consider the creation of a mutual agreement specialist and a general affairs section, which is in charge of coordination with the MOF, at the Tax Administration and Cooperation Department, GDT.

On the other hand, the exchange of information system has been enhanced. The JICA project has also contributed through the following processes, and this information exchange system needs to continue.

- (1) As a result of JICA's international taxation training and timely recommendation, GDT recognizes the importance of international taxation, and GDT has steadily established a system that specializes the Tax Administration and Cooperation Department by business field.
- (2) Instructed the establishment of an EOI unit in GDT in order to perform EOI (information exchange) work efficiently. As a result, in January 2016, the EOI section was established within the Tax Administration and Cooperation Department and one EOI officer was assigned. EOI officers are active in EOI operations.
- (3) In addition, in order to make the work of the officer in charge of EOI more efficient, guidance is given to exchange opinions on the procedures of departments such as GDT tax examination department, Risk Management Department, and Statistical Analysis Division within the International Cooperation Department. As a result, discussions were held as appropriate at the relevant section, and information was shared.
- (4) Also instructed the EOI staff to inform the District tax office manager about the EOI. As a result, a letter was sent to the head of the District tax office to ensure that the EOI director thoroughly communicated the EOI. The person in charge of EOI visited the district tax offices in Ulaanbaatar, explained the use of EOI to the head of the tax offices, and the

information exchange system was recognized.

- (5) As a result of EOI-related training so far, GDT has also concluded an agreement with 27 domestic agencies of related ministries as of February 2015.
- (6) As a result of JICA's past information exchange training, the results of information exchange requests are as follows: Russia 3 cases, Hungary 1 case, Ukraine 1 case in 2014, Russia 3 cases, China 1 case, Malaysia 1 case in 2015, after the establishment of the above EOI section, there were four information exchanges with Russia. Since then, continued to make efforts to exchange information. The number of information exchanges since 2015 has been steadily increased with 10 cases in 2015, 3 cases in 2016, and 8 cases in 2017. There are already two information exchanges in 2018.
- 2. Tax Examination Policy Department of the GDT (corresponds to NTA Corporation Tax Division, Income Tax Division, Consumption Tax Division in Japan)

There is no industry-specific section in the Tax Examination Division of the Tax Examination Policy Department of the GDT. There is one chief inspector and 8 inspectors in this division. The eight inspectors are doing examination by tax type, inspectors of the department work separately for corporate tax. Each tax inspector will also be responsible for international tax matters. Therefore, there are no international tax specialists.

However, it is necessary for the Tax Examination Policy Department of the GDT to create a section in charge of international taxation examinations, such as the International Investigation Manager of the Japan Tax Agency's Research Division. When such a person in charge of international taxation is not in the department that can be said to be the foundation of the examination, (1) the taxation office cannot conduct the international taxation examination properly (it is impossible to direct the district tax office director); (2) There is an organizational problem in that it is not possible to exchange opinions with the State Revenue and Control Department (hereinafter as "LTO") large-scale international taxation examination.

If the Tax Examination Department of the GDT, which is also in charge of the district tax offices, does not share information on international taxation with the LTO of the GDT, it is impossible to construct an objective taxation theory.

In addition, the district tax office's tax examination divisions, which are guided by the Tax Examination Department of the GDT, are not divided by industry. It is a problem similar to the LTO of the GDT described below. For as long as possible, inspectors should be able to learn the same or similar industries more efficiently and become more knowledgeable about the industry and become more familiar with industry examination.

Therefore, Tax Examination Department of the GDT should have a section in charge of international taxation investigations, such as the International Search Manager of the Japanese Tax Agency's Research Division.

Although the district tax offices have limited resources, the large tax office should organize the industry section as much as possible, and the small tax office should have the same inspector who will investigate the same industry as much as possible.

In Japan, the department called Tax Examination Department of the GDT corresponds to the Corporate Tax Division, Income Tax Division, and Consumption Tax Division (theoretical research for each tax item and the conduct of investigations to the tax office). This kind of system should be enhanced, including the increase in personnel. As international taxation is expected to become more complex in the future, international taxation is theoretically should be organized based on tax items, such as international taxation of corporate tax, international taxation of income tax, and international taxation of consumption tax.

3. State Budget Revenue and Control Department (LTO) (corresponds to NTA Research Division in Japan, National Tax Bureau Research Division)

State Budget Revenue and Control Department includes the Administrative Management Division (section chief and five inspectors), the Tax Examination Section (section chief and 32 inspectors), the Tax Revenue Division (section manager and 14 inspectors), and the Taxpayer Service Section (section manager, 9 inspectors), Mineral Resources and International Taxation Division (section manager and 7 inspectors), and Risk Management and Statistics Section (section manager and 5 inspectors).

In particular, the newly established Mineral Resources and International Taxation Division is responsible for the most characteristic mineral resources in Mongolian industry, such as (1) international organizations, (2) legal planning, (3) tax treaty, and (4) database development related issues.

In detail, the operations in charge of the Mineral Resources and International Tax Division are as follows.

- Cooperate with the working committees and project teams of foreign and international financial institutions such as the International Monetary Fund, the World Bank, the US Treasury, etc., with the aim of enforcing tax policies, tax laws and mining laws for mineral resources and mining. Make a proposal about the problem and submit it to the Tax Administration and Cooperation Department of the GDT.
- 2) Based on the examination and investigation results on mining, manufacturing operations, tax payments, and legal environment prepare drafts for government policies, laws, strategies, projects, etc., and submit proposals for improvement to the Tax Administration and Cooperation Department.
- 3) Research on negotiations on intergovernmental conventions on avoiding double taxation of income and property tax, other international tax issues, investment agreements, stabilization agreements, product distribution agreements, and receive instructions from the Tax Administration and Cooperation Department on their

implementation.

4) Conduct surveys on geological exploration research conducted with the national budget, summarize and utilize the information, and build and improve information databases.

The investigation system of the LTO is as follows:

- A. VAT section
- B. Mining section
- C. Architecture, Banking Section
- D. Retail Wholesale Section

The investigation section has one chief inspector and 32 inspectors and implement tax examination by four industries.

In addition, more detailed industry classifications are as follows: *

- Investigation of securities companies-Banking section
- Manufacturing, information communication, transportation, trading company / trade, real estate, hotel / restaurant, medical / welfare corporation survey, retail / wholesale industry examination section
- International Tax examination: Each section is in chargeon the issue.

The architecture (construction) and banking sector are investigated in the same section is not very sufficient, and it is difficult for inspectors to learn the industry professional skills, because the industries are too different. In the case of Japan, even if one sector has another industry, it is regarded as a similar industry. In addition, there are too many industries in the retail / wholesale section, and investigators who can conduct surveys in various industries do not have the expertise.

In Japan, in the construction sector, inspector work for a year only by surveying large companies in the construction industry (and similar civil engineering, for example). Then, the investigator become familiar with the industry situation of the construction industry, and also masters the tax investigation method peculiar to the construction industry, and a very efficient investigation system is established. When investigating a large company in particular, if you do not have enough industry knowledge, the investigation will not proceed and the company will respond better than the authorities. In Japan, there will be personnel changes in about two years, so new inspectors will be responsible for the industry, so personnel will not stagnate and new specialists can be trained. The same inspector cannot investigate the same industry for 10 years. For this reason, there is no adhesion with corruption in the industry.

Therefore, it is necessary to consider adding more sections for different industries based on the scale and structure of the GDT. Furthermore, it is important from the viewpoint of improving the examinative ability of assigned inspectors to carry out industry investigation studies from two viewpoints of domestic tax examination and international tax examination for each industry section and to accumulate research notes.

The bank research section needs to develop bank research know-how. Although bank surveys are difficult in the current system, improving the skills of visiting banks and conducting surveys will be essential in the future. If the inspector does not actually confirm the taxpayer's bank account in the bank, the examination will not be effective.

As industry and bank investigation techniques improve, a compulsory research team, such as the inspection department at NTA in Japan, can be created in the future. This is because inspections cannot be conducted without bank investigation skills.

However, international taxation is handled by each section, which means that international taxation can be managed by industry, which is a very good point.

Considering the GDT's personnel structure, it is better multiple inspectors are responsible for large companies in the same industry in order to conduct a search than to divide about 100 inspectors into international and domestic ones. Therefore, it is desirable to proceed with domestic and international examinations at the same time, and once the domestic examination is completed, it is desirable to continue the international examination with the same group of inspectors. Giving knowledge of international taxation to all inspectors of the LTO of the GDT, which is not large in number, is not difficult to train them through training center. In other words, it is not impossible to train an inspector who can conduct both examination of international and domestic survey.

4. Legal Affairs Division of the GDT (In Japan, each department has a legal examination section at the National Tax Agency, National Tax Bureau, Tax Office)

Legal Affairs Division of the GDT has one chief inspector and one inspector in charge of international taxation. Furthermore, from a tax law review perspective, there is a need to assign a section for international taxation in the dispute resolution committee equivalent to the tribunal, and to create a section for discussion with prosecutors to deal with tax litigation, such as the Japanese litigation office.

5. Training Center of the GDT (Equivalent to the Japanese National Tax Agency / Tax College)

The training center is also very enthusiastic about training. Considering future research, it is better to conduct training for each type of industry, such as resource industries. This is because it is possible to give knowledge of the industry in advance and to conduct a quick survey. In addition, it is essential to establish legal theory training for staff in charge of drafting and reviewing laws in the future.

Technical cooperation deliverables

Proposal for improvement of international taxation system

MOF&GDT WG Legal provisions to consider

Version upgrade after October 13 WG 3rd meeting Expert Kodera

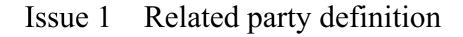
4 Issues

1. Related party definition (Illustration added Slide No.14-22)

2. Points of the revised CFC tax system(Additional reasons for taxing passive income, etc. Slide No.44-46)

(★ Transfer pricing taxation, Appendix 17 (4), attached copy Slide No. 49)

- 3. Definition of so-called real standards
- Management control standards, management dominance, etc.
- 4. Intangible assets and domestic source income
- (★ Taxation on foreign corporations: Illustrated attachment attached Slide No. 70)



Related parties of overpaid interest tax system (Measure Act 66-5-2)

- Item 2 "Amount of interest paid by related party" in this section refers to a related party of a corporation (meaning the person listed below. The same shall apply hereinafter in this paragraph, paragraph 4, item 2 and paragraph 9, item 1 b)) For interest paid (including those specified by a Cabinet Order as equivalent thereto) and other expenses or losses specified by a Cabinet Order (the same shall apply hereinafter in this Article) (Excluding the amount of interest paid to consolidated corporations with wholly-controlled relationship between them), and the taxable income of the related parties (depending on whether the related parties are individuals or corporations, respectively) of those specified bonds (this refers to specified bond repurchase transactions, etc., as defined in Paragraph 5, Item 8 of the preceding article.) included in the government ordinance as income that should be the tax base for income tax or corporate tax of related parties, etc.
- Reciprocal transactions:
- [Country with conditions to buy back or sell back at a certain price after a certain period of time]Transactions such as bonds and financial bonds.

Definition of parties related to overpaid interest tax system and certain third parties (Act 66-5-2)

- Item 2
- 2(I) The total number of issued shares or investments (excluding own shares or investments held by one's own company; hereinafter referred to as "issued shares, etc." in this item) of either company with the other company more than fifty percent of the total number or amount of shares or investment directly or indirectly held, other special relationships specified by a Cabinet Order, or an individual's total number of issued shares, etc. A relationship that directly or indirectly holds more than fifty or more amount or amount of stock or investment, or other special relationship specified by a Cabinet Order.
- (II) A person specified by a Cabinet Order as a person who provides funds to the corporation and a person related to the provision of the funds

Kodera's comment (Related parties)

- The definition of the related party of the overpaid interest tax system is similar to the definition of the related party of the transfer pricing tax system.
- Common points between transfer price tax and overpaid interest tax
- (1) Foreign corporation with parent-child relationship (more than 50% owned)
- (2) Foreign corporations with siblings (more than 50% owned by the same person)
- (3) Foreign corporation with substantial control
 - Concurrent directors
 - Depends on transactions for business activity equivalent parts
 - Borrowing / guaranteed procurement of a substantial portion of business funds
 - * However, only corporations are related to transfer pricing taxation. Individuals are not related parties.

Related parties of overpaid interest tax system (decree 39-13-2)

• item 8

• One company prescribed in Article 66-5-2, paragraph (2), item (i) of the Act owns 50% or more number or amount (stock or investment; the same applies to paragraph 12 below) directly or indirectly of issued shares or contributions (excluding own shares or investments held by one's own company; hereinafter referred to as "issued shares, etc." in this item) by the other corporation. Other special relationships specified by Cabinet Order are the following relationships.

Related parties of overpaid interest tax system (decree 39-13-2)

- Item 8
- (I) A relationship in which either one of the two corporations directly or indirectly holds the total number of issued shares, etc. of the other corporation, or shares etc. of 50% or more of the total number or amount.
- (II) Issuance by two corporations by the same person (if the person is an individual, the individual and an individual who has a special relationship prescribed in Article 4, Paragraph 1 of the Enforcement Order of the Corporation Tax Law) Relationship between the two legal entities when directly or indirectly holding the number of stocks, etc., which is more than 50% of the total number or amount of completed shares, etc. (excluding those falling under the relationship listed in the preceding item).

Related parties of overpaid interest tax system (Measure 39-13-2): Real control relationship

- Item 8
- (III) A relationship in which one of the two corporations can substantially determine all or part of the business policy of the other corporation due to the facts listed below and other similar facts (listed in the preceding two items) Excluding those that fall under the relationship.)
- (A) One or more of the officers of the other corporation, or an officer who has the authority to represent the person who concurrently serves as an officer or employee of the other corporation, or used to be served as an officer or employee of the other corporation.
- (B) The other corporation conducts a substantial part of its business activities depending on transactions with the other corporation.
- (C) The other corporation has procured a substantial portion of the funds required for its business activities by borrowing from the one corporation or with the guarantee of the other corporation.

Related parties in overpaid interest tax system (Measure 39-13-2) (when individuals are involved)

- Paragraph 10
- An individual prescribed in Article 66-5-2, paragraph 2, item 1 of the Act directly shares the number or amount of shares, that is 50% or more of the total number or total amount of issued shares of the corporation, or, the relationship held indirectly or any other special relationship specified by a Cabinet Order shall be the following relationship:
- (I) A relationship that individuals (including individuals with special relations stipulated in Article 4, Paragraph 1 of the Ordinance for Enforcement of the Corporation Tax Law; the same shall apply in the next item and the following paragraph) hold more that fifty percent of the total number or total amount of issued shares of the corporation directly or indirectly holds more than fifty shares or amount of shares, etc.
- (II) A relationship that allows the individual to substantially determine all or part of the business policy of the corporation (the preceding item is listed) due to the facts listed below and other similar facts between the corporation and the individual, excluding those that fall under the relationship.)
- (A) The corporation conducts a substantial part of its business activities depending on transactions with the individual.
- (B) The corporation has procured a substantial portion of the funds required for its business activities by borrowing from the individual or under the guarantee of the individual.

Related parties of overpaid interest tax system (decree 39-13-2)

- Item 11.
- In the case of item 1 of the preceding paragraph, whether or not an individual directly or indirectly holds 50% or more number or amount the total number or the amount of issued shares of the corporation should be determined by the total percentage of the percentage of shares held directly by the individual (the ratio of the number or amount of the corporation's shares held by the individual to the total amount or total number of issued shares of the corporation) and the shareholding ratio of the indirectly held shares.

Related parties of overpaid interest tax system (decree 39-13-2)

- Item 12: The shareholding ratio of indirectly held shares, as prescribed in the preceding item refers to the ratio specified in each item according to the category in each of the following items (if any cases listed in each item is applicable, the total proportion of the proportions specified in each item).
- (I) If the number or amount of shares, are owned by the individual set forth in the preceding paragraph,50% of the total number or total number of issued shares of a corporation (hereinafter referred to as "shareholder corporation") as a shareholder as defined in Article 2-14 of the Corporation Tax Law of the said corporation in the preceding paragraph the number or amount of the corporation's shares, etc. held by the shareholder corporation is a percentage of the total number or total amount of issued shares of the corporation (If there are two or more shareholder corporations, the sum of the ratios calculated for the two or more shareholder corporations)

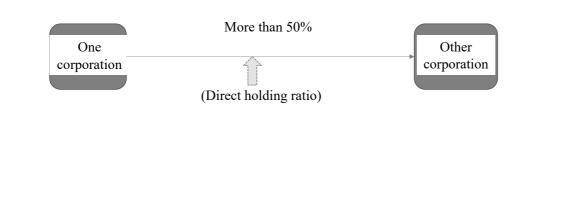
Related parties of overpaid interest tax system (decree 39-13-2)

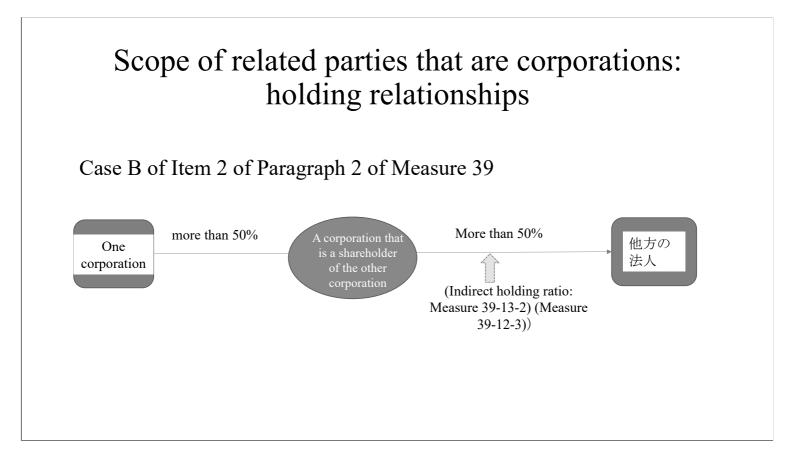
• Item 12

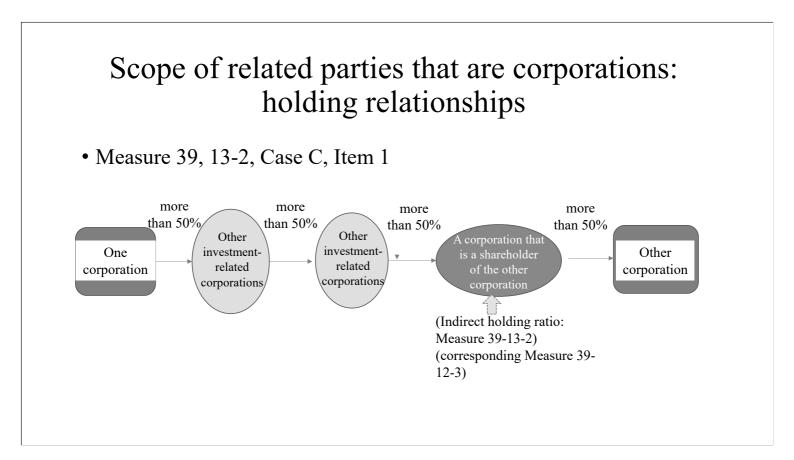
• (II) There is a chain relationship between the shareholder corporation of the corporation set forth in the preceding paragraph (excluding the shareholder corporation of the same number that falls under the preceding item) and the individual in the same paragraph through ownership of issued shares, etc. When one or two or more corporations (hereinafter referred to as "Investment-related corporations" in this item) intervene (the investment-related corporation and the shareholder corporation are each 50% of the total or total number of issued shares, etc.

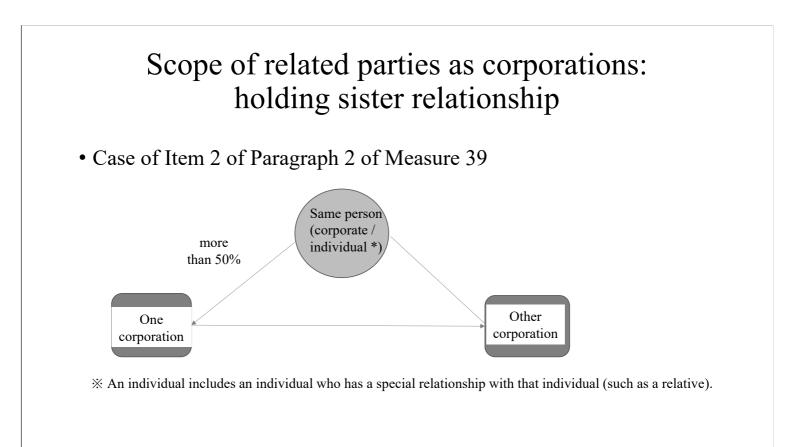
Scope of related parties that are corporations: holding relationships

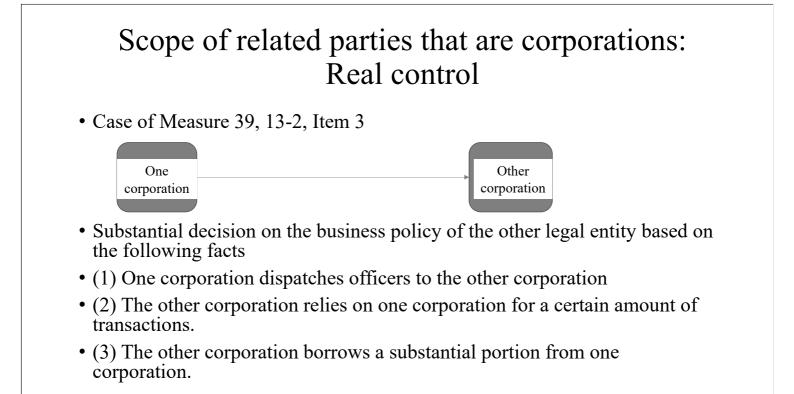
• Case A of Act 39, 13-2, Item 1

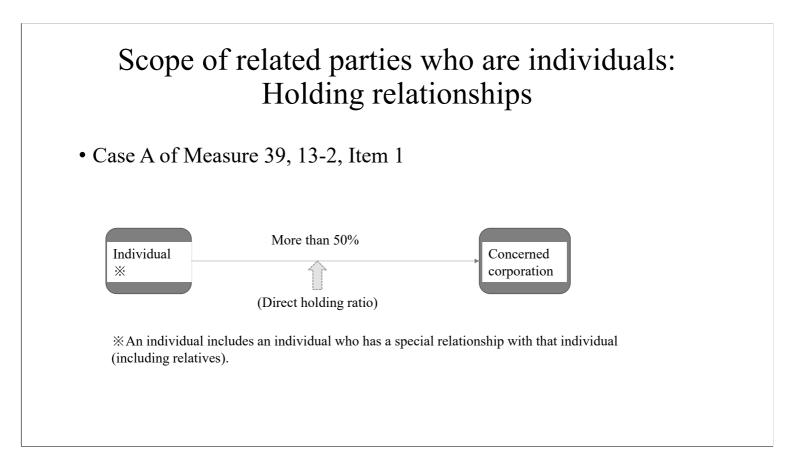


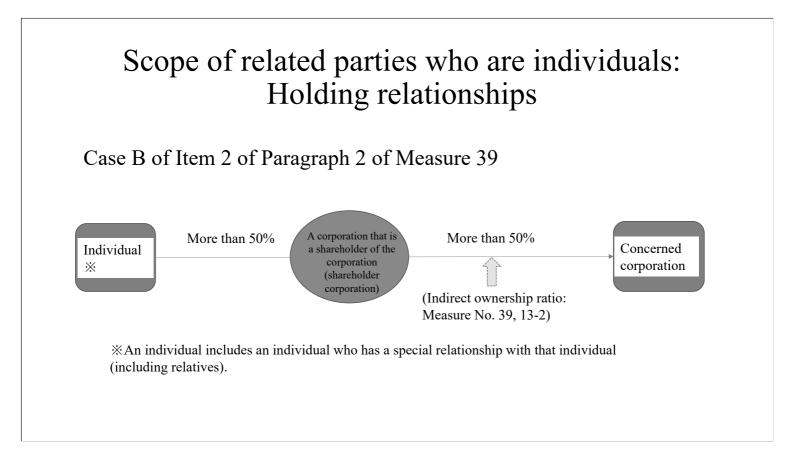


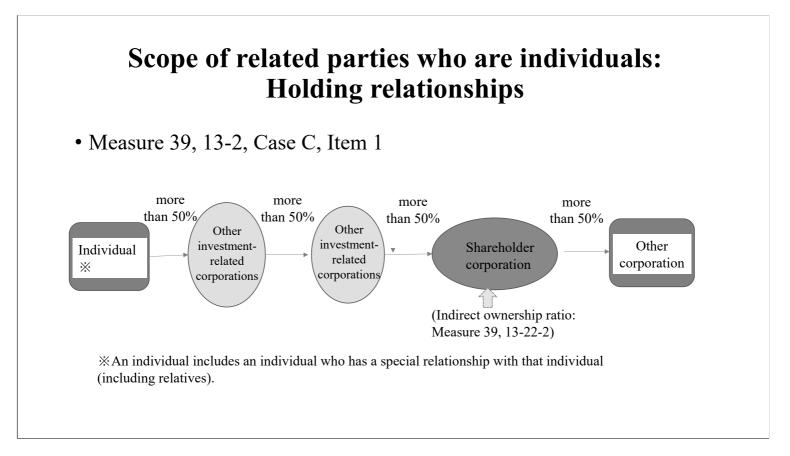












Scope of related parties who are individuals: Real control

• Case of No. 39, No. 2, No. 2-2



- Substantial decision on corporate business policy based on the following facts
- (1) The corporation relies on a considerable amount of transactions with individuals.
- (2) The corporation has borrowed a considerable part from the individual.
- * Individuals include individuals who have a special relationship with the individual (including relatives).

Certain third parties with overpaid interest tax system (decree 39-13-2)

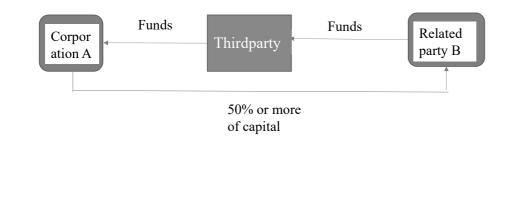
- Article 13 The person specified by a Cabinet Order prescribed in Article 66-5-2, Paragraph 2, Item 2 of the Act shall be the following person.
- (I) The third party in the case where it is deemed that the related party of the corporation has provided funds to the corporation through a third party;
- (II) The third party in the case where it is deemed that the third party has provided funds to the legal entity by guaranteeing the debt of the legal entity to the third party.*
- Article 66-5-2 (2): Persons who provide funds to the corporation and persons specified by a Cabinet Order as those who are related to the provision of the funds

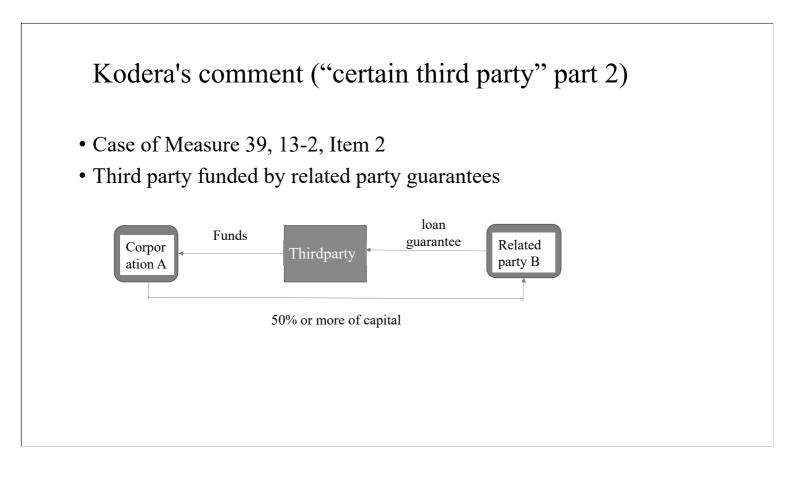
Certain third parties with overpaid interest tax system (decree 39-13-2)

- Article 13
- (III) (a) Bonds ((b) including bonds lent to the corporation from a third party as the related party guarantees the debt of the corporation.) lent to the corporation from the related parties of the corporation is provided to other third parties as collateral, transferred in bond trading (referred to bond trading as defined in Article 42-2, paragraph 1 of the Act), or cash collateral by lending in bond lending transactions (meaning cash-secured bond lending transactions prescribed in Article 66-5, Paragraph 5, Item 8 of the Act) the third party and other third parties in cases where it is deemed to have provided funds
- Reciprocal transactions
- Transactions such as bonds and financial bonds with conditions to buy back or sell back at a certain price after a certain period.

Kodera's comment ("certain third party" part 1)

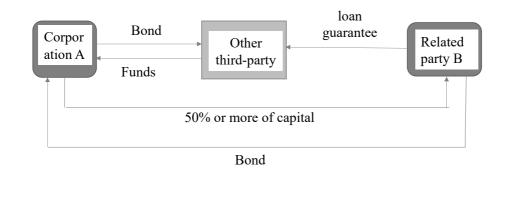
- Case of Item 2 of Paragraph 2 of Measure 39
- Funding from related parties through a third party

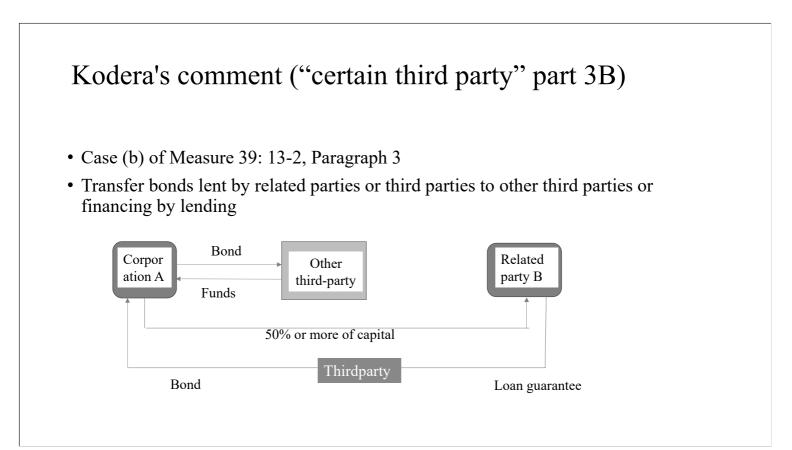




Kodera's comment ("certain third party" part 3A)

- Case 39 of item 2 of item 2 of Measure 39 (a)
- Transfer bonds lent by related parties or third parties to other third parties or financing by lending





Related parties of overpaid interest tax system (decree 39-13-2)

• Article 14: When applying the provisions of Article 66-5-2 of the Act, determine whether a person falls under the category of a related person, by the current status at the end of the fiscal year of the corporation in the same paragraph of the same Article.

Issue 2 Points of the revised CFC tax system

2017 CFC tax reform

- A major overhaul of the combined tax system of foreign subsidiaries (tax heaven tax system) has been made.
- Originally, this tax system was designed to prevent domestic companies from unduly reducing their corporate tax burden in Japan by transferring their income to low-tax overseas subsidiaries. Taxes in Japan that are combined with the income of (shareholders of overseas subsidiaries).

Conventional CFC tax system

- Foreign corporations in which Japanese residents and domestic corporations own a total of more than 50%, directly or indirectly, are referred to as "foreign affiliates."
- If this foreign affiliate with a tax burden of less than 20% is located in a country with a low tax rate, it is defined as a "specified foreign subsidiary, etc." and is subject to this tax system.
- However, in order to exempt business entities that conduct business from an independent standpoint from this tax system, there are four screening criteria called "exclusion criteria".
- For certain foreign subsidiaries, that do not meet any of these four exemption criteria, all the income is added to the income of the Japanese parent company and taxed in Japan.
- If all the exclusion criteria are met, only "property income" is subject to combined taxation.

Elimination of trigger tax rate

- Under the old system, in case of the tax burden ratio is 20% or more, it is not a "specified foreign subsidiary" and not subject to the CFC tax system.
- This "20%" was also called the "trigger tax rate" and was important as an entry standard for the system.
- However, for paper companies with apparently no economic substance, exempting the system from the fact that the tax burden is more than 20% was problematic.
- Therefore, the trigger tax rate has been abolished.

Introduction of new corporate concept

- New corporate concepts such as "paper companies" and "cash boxes" have been defined, and a combined taxation system has been created for these companies.
- Under the new system, even if the tax burden ratio is 20% or more, if it falls under a paper company, etc., the combined tax will be imposed on all the income of the company
- For foreign affiliates that do not fall under the category of a paper company, it will be examined whether or not they meet the "Economic Activity Standards" (the four exemptions of the old system).
- If one of the four economic activity standards is not met, all the income of the foreign affiliate is added to the income of the parent company and taxed in Japan, as in the old system.
- On the other hand, if all economic activity criteria are met, only certain "passive income" is subject to combined taxation.
- This range of passive income has been greatly expanded compared to the range of asset income in the old scheme.
- The new system will be applied to foreign affiliates for fiscal years beginning on or after April 1, 2018.

Q Paper company in the new tax system?

- What is a paper company?
- Specifically, it refers to a foreign affiliated company that <u>does not fall under</u> any of the following.
- 1. Substantive standards
- Foreign affiliates with facilities such as offices, stores, factories and other fixed facilities deemed necessary for conducting the main business
- 2. Management and control standards
- Affiliated companies that manage, control and operate business in the country where the head office is located in Foreign country.
- If an inspector of a national tax authority requests a domestic corporation to submit documents proving that the foreign affiliated company satisfies the above requirements, and if there is no such submission by the time limit set by the officials, it is presumed that foreign affiliates do not meet the above requirements.

Judgment of foreign affiliates: Introducing the real control standard and reviewing the calculation method of the shareholding ratio

Q: There is no capital relationship, but how do you deal with cases in which a subsidiary is controlled or indirect control due to contractual relationships?

A: If a resident and a domestic corporation have a total of more than 50% directly and indirectly, it is regarded as a foreign affiliated company.

In addition, if there is a substantial control relationship such as the domestic corporation have right to request almost all of the remaining assets of the foreign corporation, it is regarded as a foreign affiliated company.

Review non-related party standards

Q: How do you deal with cases where the "unrelated party standards" are formally satisfied by intervening third parties?

A: In the case of non-related party transactions, if it is decided in advance that the transaction target will be transferred to the related party, it is regarded as a transaction conducted directly with the related party.

Three revisions of the Japanese CFC tax system

- The amendments are based on the intent of the BEPS Project Final Report, which states that taxation should be based on economic substance.
- The following three points are important revisions from the current system
- The following amendments to the CFC tax system will be applied from the fiscal year of foreign affiliates that commence on or after April 1, 2018 its business.

Points of revision

Problems of the conventional CFC tax system

- Under the current CFC tax system, the trigger tax rate test determines whether there is total taxation on a company-by-company basis, it was pointed out that if the tax burden ratio of a foreign subsidiary is higher than the trigger tax rate (20%), even if it is income without economic substance, it will not be added up.
- Solving other problems
- In this regard, corporations exceeding the trigger tax rate are not exempt from the CFC tax system, corporations such as 1) paper companies, 2) cash boxes in practice, and 3) corporations in the blacklisted countries, which tax burden is less than 30%, a system that is subject to combined taxation on a company basis will be introduced. Each definition is as follows.

First review point

- 1. Paper company = If the tax burden ratio is "less than 30%", it is subject to combined taxation on a company basis.
- Foreign affiliates that do not meet any of the following requirements become paper companies.
- <u>Substantive standards:</u> Having fixed facilities such as offices deemed necessary for conducting its main business
- <u>Criteria for management and control:</u> Manage, control and operate the business in the country where the head office is located

Second review point

- 2. If the actual cash box = tax burden ratio is "less than 30%", it is subject to combined taxation on a company basis.
- When a foreign subsidiary falls under "financial subsidiary^(notice)"
- (notice): A financial subsidiary is a foreign affiliated company that conducts banking business in accordance with the laws of the country where the head office is located and those that meet the requirements such as the officers or employees in the country where the head office is located are engaged in all the tasks normally deemed necessary for the proper execution of these businesses.

Judgment method of "virtual cash box" when it is not a financial subsidiary

For companies that are not financial subsidiaries, such as manufacturing subsidiaries, foreign affiliates that satisfy both (a) and (b) below are defined as cash boxes in effect.

(a) <u>Total passive income</u> > 30% Total asset

(b) <u>Total securities, loan, intangible asset</u> > 50%

Total asset

Passive income eligible for combined taxation

1 Interest

(2)Dividend

3 Consideration for securities lending

(4)Gain or loss on sale of securities

(5) Derivative transaction profit / loss

6 Foreign exchange gains and losses

(7)Income similar to (1) to (6)

(8)Consideration for lease of property, plant and equipment

(9)Usage fees for intangible assets

10 Gain/loss on transfer of intangible assets

(1)So-called excess profit

Combined taxation of passive income

Determined to be a foreign affiliate \downarrow yes Is the tax burden less than 30%? \downarrow yes Does not fall under a specific affiliated foreign company \downarrow no Tax burden is less than 20% \downarrow yes Satisfies economic activity standards \downarrow yes Partially covered foreign affiliated company \downarrow yes There is no combined taxation per company \downarrow yes Combined taxation of passive income

Reasons for the taxation of asset-based income (passive income), which is introduced in the 2010 tax reform

- Even if a specified foreign subsidiary satisfies the exemption criteria, but has certain asset-based income (passive income), the asset-based income is not applicable unless it satisfies the low-income exclusion criteria (deminism criteria)was subject to combined taxation.
- Reason for taxation
- To prevent tax evasion from earning income from asset management in lightly taxable countries.

Reasons for the taxation of asset-based income (increasing the range of passive income), which is introduced in the 2010 tax reform

- In the combined taxation system for asset-based income introduced by the 2010 tax reform, the range of income defined as asset-based income is extremely limited, so companies that are subject to the taxation rules on asset-based income were rare.
- Therefore, the new system positions income that can be earned without active activities as passive income and expands the scope of partial taxation to further strengthen measures to prevent tax evasion.
- That means,
- In the 2017 revision, the scope of this partial taxation has been greatly expanded, as there is a risk of avoiding tax on income that can be earned without active activities (passive income).

Third review point

- 3. Company locates in the blacklisted countries=If the tax burden ratio is "less than 30%", the company is subject to combined taxation on a company basis.
- Foreign affiliated companies that have head offices in countries or regions designated by the Minister of Finance as non-cooperative countries or regions for exchanging tax information.

Attachment of financial statements, relating to foreign affiliates

• The domestic corporation will attach financial statements, etc. relating to the foreign affiliated company to the tax return.

(1)Foreign affiliates with a tax burden ratio of less than 20% (including foreign affiliates that meet economic activity standards)

(2) Financial statements for paper companies with a tax burden ratio of less than 30%

(Reference) Appendix 17 (4) of transfer pricing taxation (attachment)

- In the transfer pricing taxation system, the tax reform in 2003 already states that a separate tax return should be accompanied by Appendix 17 (4). Companies with foreign-related parties under the transfer pricing tax system must include in their tax return data on the operating profit margin of foreign-related parties and the TPM (Transfer Pricing Method) for transfer pricing transactions with foreign-related parties.
- Copy attached.

Issue 3 Definition of the substantive standards: real control standards, management control standard, real control relationships, management control dominance

1. Real control standards (revised CFC): As determined by a foreign affiliate, the domestic corporation have substantial control relationship such as being able to request almost all of remained assets is regarded as the affiliated company.

2 Management Control Standard, Part 1 (7-3 of Measures 40, 6(3) of 66, 6-16 of Measures 66)

One of the exemptions in former foreign subsidiary combined tax system

The case where this is satisfied means that the resident and the specified foreign subsidiary related to the domestic corporation manage, control and operate the business at the head office location.

In this case, it is determined whether the resident or the specified foreign subsidiary of the domestic corporation manages, controls and operates the business in the country or region where the head office is located by taking into account the following four factors.

2 Management Control Standard, Part 2

- A. General Meeting of Shareholders and Board of Directors of Specified Foreign Subsidiaries
- B. Place of execution of duties as an managing officer
- C. Place of creating and storing financial bookkeeping
- D. Other condition

In this case, for example,

- (1) The general meeting of shareholders of the specified foreign subsidiary is held in a place other than the country where the head office is located;
- (2) Even if there is a fact that a specific foreign subsidiary, seeks its opinion in consultation with its resident or domestic corporation in formulating a local business plan. It does not mean that the subsidiaries do not control and operate the business themselves.

3 Management control dominance

This is one of the criteria for judging domestic corporations and foreign corporations, and the place where the business of the corporation is actually controlled is classified as the location of the corporation.

Management doctrine is adopted in most European countries.

★Adopted by England, Singapore, Hongkong

For example, an Irish corporation established in Ireland may be considered a foreign corporation under Irish tax law if the actual control is in Bermuda. Thus, if an Irish company that is considered a foreign company in Ireland receives royalties from a Dutch subsidiary, the royalties will be foreign source income received by the foreign company and will not be taxable in Ireland.

Reference: Head office location principle

- 4. Substantive affiliated relationship (TP)
- This is a type of TP tax system in which a foreign corporation that is an overseas affiliate has a special relationship with a corporation. According to the law, the following three relationships are exist:
- I) A person who has at least one-half of the officers of a foreign corporation or an officer who has the authority to represent the person who is also an overseas related party, concurrently serving as an officer or employee of the one corporation, or being an officer or employee of the one corporation
- 2) A foreign corporation that is a foreign affiliate engages in a significant portion of its business activities depending on transactions with that other corporation
- 3) A foreign corporation that is a foreign affiliate has raised a substantial portion of the funds required for its business activities by borrowing from or being guaranteed by that one corporation.

Issue 4 Intangible assets and domestic source income

Q: What kind of legal thinking is required to create a rule that the profits generated when selling a foreign parent company of a Japanese corporation that has intangible assets related to the mining industry to other companies in the foreign country are income sourced in Japan? This foreign parent does not have PE in Japan.

A Conduct a comprehensive review of corporate and withholding tax on foreign corporations.

B It is necessary to consider "assets" from civil law and accounting, and "assets" from other tax laws besides the corporate tax law.

C It is necessary to consider whether the intangible asset is included in the domestic "assets" under Article 138, item 2 of the Corporation Tax Act. If included, the taxation of foreign corporations without PEs will be considered in accordance with Article 141, Item 2 of the Corporation Tax Act.

Mining License

- I think Mining License is <u>not</u> an intangible asset.
- Because the license is just administrative license.
- Everybody can get the license.
- No need to have special scientific technique.

A. Consideration of taxation of foreign corporations (cases without PE & cases with PE)

- (1) The sale of the foreign parent company is not a sale of assets owned by the subsidiary, because of this is not problem of "transfer of domestic assets" in Article 138-3 of the Corporation Tax Law, but there is a problem of "management and holding of domestic assets" in item 2 of the same article.
- (2) Does the subsidiary have intangible assets that fall under "Assets" in item 2 above? To this end, Article 177 of the Ordinance for Enforcement of the Corporation Tax Law will be considered.
- (3) Since the foreign parent company does not have a PE,taxation is applied to foreign corporations that do not have PE (Corporate Tax Law Article 141, item 2)
- (4) If there is a PE of the foreign parent company, the income attributable to the PE (Article 141, item i of the Corporation Tax Law)If there is no PE, domestic source income not belonging to PE (No. 1b) 3)

B. "Assets" in civil law, company law, and accounting

- (1) In the civil law, "things" are tangible and do not include intangible fixed assets stipulated by the Corporation Tax Law. For this reason, the concept of "asset" in the Civil Code cannot be adopted as the first income asset.
- (2) Under the Companies Act, what is stipulated in the company accounting rules is generally regarded as the first income asset.
- (3) In accounting, the concept of "asset" is considered to be formed from the viewpoint of information disclosure for stakeholders.
- (4) However, since taxation on foreign corporations is based on income as a taxable property, as described later, we believe that the concept of "asset" of first income should be grasped from the viewpoint of what is the source of income generation. Therefore, the concept of "asset" in the Companies Act and accounting cannot be adopted as the source of income.

C1 Concept of "asset" other than corporate tax

- Property in the inheritance tax law is understood to mean "anything of economic value that can be estimated in money."
- The concept of assets in the Consumption Tax Law is formed on the basis of what is to be traded from the perspective of adding value.
- The concept of "asset" in the Income Tax Law is a concept that includes all property rights, and includes a wide range of properties including real estate and moveable property, leasehold rights, intangible property rights, rights under licenses and status.

Article 138, item 1 of the Corporation Tax Act

- (Domestic source income)Article 138 In this Part,
- "Domestic Source Income" means the following:
- When a foreign corporation operates through a permanent facility, if the permanent facility is operates independently of the foreign corporation, the functions performed by the permanent facility, assets to be used, internal transaction between the permanent facility and the head office of the foreign corporation (the head office, branch, factory, etc. of the foreign corporation specified by a Cabinet Order as being equivalent thereto and other than the permanent facility. The same shall apply in paragraph (2) of the following Article), and income that should be attributed to the permanent facility, including income resulting from the transfer of the permanent facility), taking into account internal transactions and other circumstances with it.

Corporation Tax Art.138(1)(1)

• The term "domestic source income in this Part means those listed in the following:

(1)Income to be attributed, in the case where a foreign corporation carries on a business through a permanent establishment and if the said permanent establishment were a person who is independent of the said foreign corporation in carrying on business, to the said permanent establishment, taking into consideration of circumstance such as functions performed by the said permanent establishment, assets used at the said permanent establishment and head office, etc. of the foreign corporation (meaning the head office, a branch, a factory and others prescribed by Cabinet order as a similar place of business that are other than the said permanent establishment; the same applies in the next paragraph and paragraph (2) of the next Article)(including income from the transfer of the said permanent establishment);

Article 138, Item 2 & 3 of the Corporation Tax Law

- (2) Income arising from the operation or possession of assets in Japan (income tax law Article 161 (1) items 8 to 11 and items 13 to 16 (domestic source income) excluding those that apply.)
- (3) Items specified by a Cabinet Order as income resulting from the transfer of domestic assets

Corporation Tax Art.138(1)(2)(3)

(2) Income arising from the management or possession of assets that exist in the State (excluding income that falls under income listed in items (8) to (11) and (13) to (16) of paragraph (1) of Art. 161 (Domestic source income) of the Income Tax Act);

(3) Income prescribed by Cabinet Order as a gain derived from the transfer of assets that exists in the State;

Article 138 No. 4 & 6 of the Corporation Tax Law

- 4.Remuneration for the provision of human services received by a corporation that conducts a business whose main content is the provision of human services in Japan as specified by a Cabinet Order
- 5. Real estate in Japan, the right, related to the real estate, or the lending of quarrying rights in accordance with the provisions of the Quarrying Law (Act 291 of 1950) (setting of ground rights or quarrying rights, etc.) includes any act of allowing others to use real estate, the right to exist on the real estate, or the quarrying right.), the establishment of mining rights or income tax under the Mining Law (Act 289 of 1950) consideration for lending a ship or aircraft to a resident or a domestic corporation prescribed in Article 2, Paragraph 1, Item 3 (Definition) of the Act
- 6. In addition to those listed in the preceding items, those source is determined to be domestic income by a Cabinet Order

C2 Interpretation of Article 138 of the Corporation Tax Law

- A foreign company that does not have a PE in Japan was sold to another company due to the high value of the intangible assets related to the mining business of a Japanese subsidiary. We examine whether the gain on sale can be taxed as "income arising from management or holding of assets" out of Article 138, item No. 2.
- In this case, the interpretation of the "assets" of the second income is considered to be a major problem.
- For this purpose, Article 177 of the Ordinance for Enforcement of the Corporation Tax Law will be examined.
- However, as explained in slide 56, if the assets of the Mongolian subsidiary are Mining licenses, they will not be included in 138-2. Mining license is not a technically valuable intangible asset.

C3 Corporate Tax Law Enforcement Ordinance Article 177

- Article 177. Income arising from the operation or holding of the assets listed below (from Article 161 (1) (8) to (11) and from (13) to (16) (Excluding those falling under Domestic Source Income)) shall be included in Domestic Source Income listed in Article 138, paragraph 1, item 2 (Domestic Source Income) of the Act.(1)
- Among the public and corporate bonds prescribed in Article 2, Paragraph 1, Item 9 (Definition) of the Income Tax Law, Japanese government or local government bonds or bonds issued by domestic corporations, or Article 2, Paragraph 1, Item 15 of the Financial Instruments and Exchange Act Promissory notes listed in (Definition)(20)
- A loan related to a resident prescribed in Article 2, Paragraph 1, Item 3 of the Income Tax Law (hereinafter referred to as a "resident" in this chapter) that is not related to the work performed by the resident
- 3 Life insurance contracts concluded through sales offices, offices, or other equivalents in Japan, or persons who represent the conclusion of contracts in Japan (life insurance companies or An insurance contract concluded by a foreign life insurance company, etc. prescribed in Paragraph 8 of the same Article, or a contract concluded by a Small Short-Term Insurer prescribed in Article 18 of the same Article Insurance contracts, etc.), old simplified life insurance contracts, non-life insurance contracts (Second Law of the same Act) prescribed in Article 30, item 1 of the Income Tax Law Enforcement Order (insurance, non-taxable insurance claims, damages, etc.) An insurance contract concluded by a non-life insurance company prescribed in Article 4, paragraph 4 or a foreign non-life insurance company prescribed in paragraph 9 of the same article, or a similar insurance contract concluded by a small and short-term insurer.) Agreement Right to receive a payment or distribution of the surplus of insurance (., Including those equivalent thereto)
- (2) The interest stipulated in Article 283, paragraph (1) of the Enforcement Order of the Income Tax Law (interest on loans related to domestic business) shall be the domestic source income listed in Article 138, paragraph (1), item (ii) of the Act shall not be included.

C3 Art.177 of Corporation Tax Law Cabinet Order

- Art.177 (1)
- Income arising from the management or possession of assets listed in the following is included in the domestic source income listed in Art. 138(1) (2).
- (1) Government Bond or Local Bond in the Public Bond prescribed in Art.2 (1) (9) (Definition) or Bond issued by domestic corporation and promissory note listed in the Art.2(1) (15) of Financial product trading Law.
- (2) Loan credit to the Resident prescribed in Art. 2(1) (3) except the resident's business
- (3)Right to get insurance and distribution of surplus fund on the basis of the life insurance contract concluded through the business office, office, and equivalent to those or agent concluding the contract in State, old postal life insurance, nonlife insurance contract, and other contract similar to those prescribed in Art.30 (1) Cabinet Order of Income tax law.
- Art.177(2)
- The interest prescribed in Art. 283 Cabinet Order of Income Tax Law (Loan interest on domestic business) is not included in domestic source income listed in Art. 138 (1) (2).

C4 Interpretation of Article 177 of the Ordinance for Enforcement of the Corporation Tax Act

- Since Article 177 of the Ordinance for Enforcement of the Corporation Tax Law is an enumeration, it is applicable if it complies with this purpose, and the range of its "asset" is extremely wide.
- Therefore, based on the "asset" of the second income, which is the source of income that is directly generated, if taxable income is generated in Japan, from the viewpoint whether is it appropriate under the tax law as the "asset" of the second income, it is defined as specific assets.
- And it is understood that what is expressed is all property rights, specifically, movables, real estate, intellectual property rights, rights and licenses, and status.

C5 Corporation Tax Law Article 141 (ii)

- Article 141 (1) The tax standard for income tax imposed on foreign corporations for each business year shall be based on the classification of foreign corporations listed in each of the following items, and the amount of income pertaining to domestic source income specified in those items:
- (1) Foreign corporations with permanent facilities (2) Domestic source income listed below for each fiscal year
- A. Domestic source income listed in Article 138, Paragraph 1, Item 1 (Domestic Source Income)
- B. Domestic source income listed in Article 138, paragraph (1), item (ii) to item (6) (excluding domestic source income listed in item (i) of item (i))
- (2) Foreign corporations without permanent facilities (2) Domestic source income listed in Article 138, paragraph (1), item (ii) to item (iv) of each fiscal year

C Conclusion (Article 177 needs to be prepared)

- First, it is assumed that there is a provision like Article 177 of the Enforcement Order of the Corporation Tax Law.
- Although the assets listed in Article 177 of the Enforcement Ordinance of the Corporation Tax Law are listed as examples, what is currently specified is financially related.
- Therefore, Article 177 requires provision of resource-related intangible assets.

Taxation of foreign corporations

- Taxation on foreign corporations: Illustration and copy attached
- In the 2014 revision, the taxable income under the corporate tax law relating to the income of foreign corporations was reclassified according to whether they have PE.
- Income attributable to PEs is now treated the same as domestic corporations
- (1)Foreign corporations with PE: Domestic source income listed in Article 138, Paragraph 1, Item 1 of the Corporation Tax Act. Domestic source income listed in (law 141-a)Article 138, Paragraphs 2 through 6 of the Corporation Tax Law (excluding income listed in item 1 of the same paragraph) (Law 141-b)
- (2)Corporations without PE: Domestic source income listed in Article 138, Paragraphs 2 through 6 of the Corporation Tax Law for each fiscal year (Law Act 1412)

GAAR Mongolia Model Clause

Comment 1 : Mongolian GAAR in General Tax Law model Article. 18.1

General Tax Law

Art.18 General Regulation for Prevention of Tax Evasion/GAAR

18.1 The tax administration shall take appropriate measures against tax evasion through <u>misuse</u> of any tax reduction and exemption policy and the corporate structure, <u>misuse</u> of the intergovernmental agreements and <u>reduction</u> of taxable income on the basis of tax arrangement without bona fide commercial objectives through relations with any other country with lower tax rates than Mongolia.

1. Reason of adding Bona fide

The later low tax sentence has been erased, so a simple "reduction" looks like a "reduction" that is fine.

Therefore, we incorporated the provisions of the Chinese tax law, which form the basis of this article, into a problematic "reduction."

Insert without bona fide commercial objectives described in Article 47 of the China Corporate Income Tax Law. This would result in a reduction in taxable income based on a "no-true purpose" tax arrangement.

- 2. Reason for cutting low tax rate countries
- 1) The GAAR of each country does not often mention low tax rate countries.
- 2) Tax avoidance involves various cases, including or not involving low tax rate countries. It is better not to specify.
- 3) Also, since the tax rate (%) fluctuates, it is better not to focus on the tax rate

Comment 2 Model model article based on the Corporate Income Tax Law.

• 18.1.1 (referring to Art.47 of Corporate Income Tax Law in China)

If an enterprise enters into any business tax arrangement without bona fide commercial objectives economic substance and business purpose

that results in reduced taxable revenue or income, the tax authority is entitled to shall make adjustments based on appropriate reasonable methods.

Reason of using economic substance and business purpose

Common law principle: business purpose & economic substance, Based on the substance over form and the reasonable commercial purpose of the GAAR principle in China and the ESD (Economic Substance Doctrine) in the United States.

4

Reference: Article 47 of the China Corporate Income Tax Law

Art. 47

If an enterprise enters into any business arrangement without bona fide commercial objectives that results in reduced taxable revenue or income the tax authority is entitled to make adjustments based on reasonable methods.

Comment 3 model Article. 18.1.2

18.1.2

In the case that <u>taxpayer's intention</u> of tax arrangement is to look for defects of provisions of tax law or the arrangement is deemed to be <u>sham or fictitious</u> based on Mongolian Civil law, the tax authority shall take appropriate measures against those tax arrangement.

- Reason of specifying taxpayer's intention
- I referred to the third criterion for UK abusive.
- "③ Is the structured transaction intended to find defects in tax law provisions?" Referred to three abusive judgments diagnostic criteria
- Refered the German GAAR Article 42(4) (Subjective factor) "If the taxpayer's intention is to reduce the tax burden"

Private legal considerations

- Reason of specifying Sham, fictitious
- In case of "sham" referred common law principle and Belgium GAAR, and in case of "<u>fictitious" referred to Hongkong</u> GAAR& Mongolian Civil Law.
- <u>Reason of specifying Civil law</u>

Prof. Nakazato of the University of Tokyo "Private Law Theory" & Article 61 of the Tax Adjustment Act of 1934 (formerly GAAR) "Avoid or reduce tax obligations by abusing the form and formability of civil law or can not be reduced" was reffered.

Mongolian Civil Law Article 56

56.1 A transaction shall be deemed void if:

56.12 made fictitiously;

GAAR References

GAAR

- Feathers of GAAR (General Anti-Avoidance Rules)
- Domestic laws stipulate, tax authorities avoid tax avoidance legislation
- A provision that gives the tax authority to deny tax benefits for transactions whose sole purpose is to gain tax benefits. A general rule that covers a wide range of applicable taxes and applies to income tax, corporate tax, inheritance tax, and other tax items.
- GAAR has been introduced in 24 countries around the world, and G20 countries without GAAR include Japan, South Korea, Indonesia, Saudi Arabia, Mexico, Argentina, Russia and Turkey.

★ GAAR Part 2 GAAR of Japan

Individual disclaimers

- Excessive interest tax, undercapitalization, LOB
- (GAAR of Japan)
- The act calculation denial rule, which denies the effect of "acts" or "calculations" of corporations that result in "unsuccessful" reduction of corporate tax burden, and allows taxation to be recalculated to the expected normal act calculation, is introduced.
- Regulations against the calculation of family company behavior (before the war)
- Prohibition of calculation of actions related to reorganization (2001)
- Provisions against the calculation of conduct by consolidated corporations (2002)
- Prohibition of Act Calculation Regarding Business Succession Tax System (2009)

★ Grounding legal acts of GAAR

U.S. type

• IRC Article 7701 (o) IREconomic Substance Doctrine (ESD)

German type

• Article 42 of the General Tax Law (Provision for Denial of Tax Avoidance)

British type

• Article 207 of the Finance Law 2013 (judgment of structured transactions and abuse) Belgian type

• GAAR method (Private law of Sham transaction)

French type

• Article 64 of the Tax Procedures Act (Private Law Abuse Doctrine)

Chinese type

• Article 47 of the Corporate Income Tax Law (Economic realism and economically reasonable business purpose)

★ Countermeasures against tax avoidance other than GAAR

1. GAAR

2. SAAR : Specific Anti-Tax Avoidance Rule

Example: Japanese family company's action calculation denial rule (Corporate Tax Law Article 132)

3. TAAR : Targeted Anti-Avoidance Rule)

Example: Consolidated tax payment, reorganization, denial of calculation of income attributable to PE

4. Axiom established by case law (Doctrine)

Tax evasion principle in common law (Ang

★Tax evasion principle in common law (Anglo-American approach)

business purpose
 step transaction
 substance over form
 sham transaction
 economic substance

★ US GAAR: IRC Article 7701 (o) 2010 Act

- ESD (Economic Substance Doctrine): Based on common law axioms, instead of newly stipulating GAAR which is a general rule of tax avoidance.
- ESD requirements and definitions
- 1. The transaction has changed the economic situation of the taxpayer in a substantive aspect different from the federal income tax (objective requirement)
- 2. The taxpayer has a different substantive purpose from the federal income tax in conducting the transaction (subjective requirement)

★ ★ UK GAAR (2013 GAAR regulations: Limited abuse prevention measures-not prevent tax avoidance!)

Proofing responsibility Tax authority

Disavowal requirement: Abusive criteria (←not avoidance)

- (1) Whether the actual results of the structured transaction are consistent with the principles in the legislative intent of the tax law.
- (2) Is the process of producing the results planned or involves abnormal means?
- (3) Is the structured transaction intended to find defects in tax law provisions?
- GAAR criteria: double rationality test
- (1) Is structured transaction a reasonable activity?
- (2) Can you reasonably judge about structured transactions?

★ Chinese type 1 (GAAR introduced from 2008)

GAAR introduction in China in 2008

GAAR is the last resort. GAAR is applied when tax avoidance transactions cannot be denied under individual rules such as TP tax system (introduced in 1991) and TH tax system (introduced in 2008). Individual provision priority.

(1) Legal basis: Article 47 of the Corporate Income Tax Law (introduced in January 2008)

- "If a company's taxable income or amount of income decreases as a result of a series of arrangements without a reasonable business purpose performed by the company, the taxing authority shall have the right, in a reasonable manner, to correct it."
- Tax avoidance principle (shown in many relevant circulars)
- ①Substance over form
- 2 Reasonable commercial purpose

2)General Anti-Avoidance Rule in China

Administrative Measures on the General Anti-Avoidance Rule (Trial) (December 2, 2014) Promulgated and enforced on February 1, 2015. This management law is the basic law of tax measures.

★Chinese type 2

• Administrative Measures on the General Anti-Avoidance Rule (Trial) (December 2, 2014)

Art.1: In order to control GAAR administration, administrative measures related to GAAR are based on companies in the People's Republic of China.(4) Formulated in accordance with the Income Tax Law, the National Tax Collection Law, and the ordinances that enforce it.

Art.2: The tax evasion measures are based on Article 47 of the Corporate Income Tax Law and reasonable commercial activities intended to obtain tax benefits. Implemented in accordance with special tax adjustments in Article 120

Art.3"Tax benefits" refer to all reductions, deductions and deferrals of corporate tax payables. :

Art.4 The international tax avoidance scheme has the following features.

- 1) The sole or primary purpose is to obtain tax benefits.
- 2) Tax benefits are obtained by using transactions that are recognized for the purposes of tax law but are inconsistent with economic substance.

★Chinese type 3

- Art.5 : Under the substantive principle, tax authorities make the following special tax adjustments with reference to other similar transactions having reasonable commercial purpose and economic substance.
- 1) Reorganization of all or part of the transaction
- 2) For tax purposes, ignore the existence of trading partners and treat trading partners as the same organization.
- 3) Re-adjustment of related income, reduction, tax motive, tax deduction, distribution of profits between parties
- 4) Other reasonable methods

★ Chinese type 4

- Art.6
- For general tax avoidance, individual provisions such as transfer pricing, cost sharing, CFC taxation, and reduced capital taxation will be given priority over GAAR.
- Furthermore, in order to avoid this general tax, the provisions of beneficial ownership (beneficiary principle) and LOB (limitation on benefit) under the tax treaty are given priority over GAAR.

★German GAAR

• Article 42 of the General Tax Law (Tax avoidance provisions)

This GAAR, Article AO42, cannot circumvent tax regulations due to abuse of the choice of transaction forms in the law. In addition, there is a provision that, if abuses exist, tax claims arising from a transaction form that appropriately reflects the economic substance of the transaction will arise.

German GAAR History Part 1

1871-Establishment of tax law system by the establishment of the German Empire

1918-End of World War I

1919 Reichsadgabenordnung (RAO)

Article 4 (Economic observation method: wirtschaftliche Betrachnungweise)

"In interpreting tax law, its purpose and economic significance and the development of various relationships must be considered. "

(Provisions governing the principle of interpretation)

➡This economic observation method was abolished in 1977.

German GAAR History Part 2

1919 Reichsadgabenordnung (RAO)

Article 5 (GAAR)

"Duty to pay taxes cannot be avoided or reduced by abusing of the form and formability of civil law has reduced"

1933: Nazi administration established

1934 Tax reform

Enactment of tax adjustment law (steueranpassungsgesetz)4Article 4 of the General Tax Act

1919 has been replaced by Article 1 of the Tax Adjustment Act.

German GAAR History Part 3

1934 Tax Adjustment Act (steueranpassungsgesetz) GAAR

Article 6

(1)""Duty to pay taxes cannot be avoided or reduced by abusing of the form and formability of civil law has reduced"

(2)"If there is abuse, tax will be levied as in the case of legal formation corresponding to economic events, facts and circumstances." (Interpretation: Tax Provision that when avoidance is recognized, taxation should be re-established in an appropriate legal form.)

The Tax Adjustment Law was abolished in 1976, but Article 6 has been carried over to Article 42 of the General Tax Law (Abgabenordnung) (AO Article 42).

German GAAR Basics

- Anglo-American GAAR: Tax Avoidance Denial Approach Established by Case Law
- GAAR in the French and Dutch continents: An approach to the abuse of private law
- Germany takes a different approach.

German GAAR development process

- (1) The Economic Observation Law, which stipulates the principle of interpretation of the tax law, was stipulated in Article 4 of the Reich General Tax Law 1919.
- (2) This principle of legal interpretation is not defined in private law.
- (3) The Economic Observation Law has been abolished, and at present Article 42 of the AO is a provision to deny tax avoidance.

GAAR application criteria in German case: improper transaction + existence of tax avoidance purpose

- 1. (Inappropriate transaction: Kodera)A transaction is considered inappropriate if the legal form of the transaction selected by the taxpayer is not appropriate and an unrelated third party can presume that the transaction will not take place under the same circumstances.
- 2. (Tax advantage: Kodera)The form selected by the taxpayer results in a favorable tax relationship when compared to a properly performed transaction
- 3. (Correctness: Kodera)When the choice of format cannot be justifie
- 4. (subjective factor)When the taxpayer intends to reduce the tax burden as a subjective factor of the taxpayer.

GAAR applied GL by German tax authorities

- 1. (Selection of legal structure: Kodera)Legal structures have been selected that result in inappropriate intended economic outcomes.
- 2. (Tax benefits 1: Kodera)The tax benefits that cannot be normally obtained from the selected transaction are obtained.
- 3. (Tax benefits 2: Kodera)The tax benefits obtained are not normally available and
- 4. (Legal commercial reason: Kodera)The taxpayer cannot provide legitimate commercial reasons other than tax for the selected transaction.

German GAAR case: Delaware case #1

- Bundesfinanzhof (BFH) ruling on May 20, 2002
- Factual relationship
- A German corporation controlled by a US corporate group has established a subsidiary in the US state of Delaware.
- German law has received a loan from a German bank to invest in a US subsidiary.
- German law had deducted the interest expense on the loan against losses.
- The purpose of the U.S. subsidiary was to fund a research head for affiliates of the U.S. corporate group.
- The US corporation had an office, telephone and fax facilities, and a parttime treasurer.

German GAAR case: Delaware case # 2

German tax benefits

- (1) Interest expense on borrowings that are the source of investment in US corporations can be deductible(Interest rates in Germany were higher and more favorable than in the United States.)
- (2) The dividend income is tax-free in Germany.

About dividend income:

Dividends received by resident corporations from other resident corporations are tax-exempt from fiscal years beginning on after January 1, 2001, regardless of the percentage or duration of ownership. However, 5% of the dividend income was deemed to be a non-tax deductible, as it was considered a related expense for tax-exempt income. Dividends received by resident corporations from foreign corporations are tax-exempt, as are dividends from resident corporations, and the same is true of the fact that 5% of the dividend amount cannot be deductible.

German GAAR case: Delaware case # 3

- Federal Finance Court (Bundesfinanzhof: BFH) Ruling on May 20, 2002
- The court,
- The US subsidiary has not stated that it is suspicious of being substantial.
 ➡ In other words, the US subsidiary is substantial.
- This scheme is not abusive.
- The meaning of the scheme:
- If a German corporation directly finances its US affiliates, the interest on the loan accrues and is taxed under German law. To that end, they set up a subsidiary in the United States and returned the funds to Germany in the form of dividends.

Germany 2008 GAAR revision

- "Clarification of the concept of abuse"
- Three features of the revised law
- 1. Improper tax planning constitutes abuse. If there is no legal basis, tax is reapplied to an appropriate tax plan.
- 2. A taxpayer can refute a finding of abuse by showing that a particular plan has a legitimate business purpose.
- 3. GAAR is subordinate to the application of individual disclaimers. Instead of the legislation actually selected, the corresponding legislation is recognized and forms the basis for taxation.

Keywords of GAAR definition in each country Part 1

- Keyword of the EU's GAAR →arrangement
- Keyword of the Ireland ⇒tax avoidance transaction
- Keyword of the UK ➡tax arrangement
- Keyword of the India ⇒arrangement
- Keyword of the Australia ⇒scheme & tax benefit
- Keyword of the Canada →avoidance transaction
- Keyword of the Singapore →arrangement

Keywords of GAAR definition in each country Part 2

- Keyword of the New Zealand ⇒tax avoidance arrangement
- Keyword of the Hongkong ⇒transaction, artificial, fictitious, the relevant person
- Keyword of the South Africa ➡ impermissible tax avoidance transaction

1 EU GAAR terms and denial requirements

- Related term : artificial arrangement
- Requirement : Five criteria for artificially

2 UK GAAR terms and denial requirements

- Related terms : tax arrangements abusive
- Requirement : Three criteria of abusive
- (1) Whether the actual result of the structured transaction is consistent with the principle in the legislative purpose of the tax law.
- (2) Is the process of producing the results planned or involves abnormal means?
- (3) Is the structured transaction intended to find defects in tax law regulations?

3 China GAAR terms and denial requirements

- Related terms : arrangement & business purpose
- Requirement : Two criteria
- (1) substance over form
- (2) reasonable commercial purpose

Mongolian GAAR draft

Art.18 General Regulation for Prevention of Tax Evasion/GAAR

18.1 The tax administration shall take appropriate measures against tax evasion through misuse of any tax reduction and exemption policy and the corporate structure misuse of the intergovernmental agreements and reduction of taxable income through relations with any country with lower tax rates than Mongolia.

18.2 The regulation for prevention of tax evasion shall be approved by the Government.

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★ Problems with Mongolian GAAR draft

Q Is it referring to Chinese GAAR?

Q GAAR is a General Anti-Avoidance Rule? Or General Anti-Abusive Rule?(Abusive in English?)

Q Does GAAR's main keywords (structured transactions, etc.) included?

Q Are there any keywords that are intended to avoid taxation?

Q What is "Corporate structure"?

Q What is "Inter-governmental Agreements"?

Q Does GAAR work with countries that are not "any country with lower tax rates"?

GAAR Recommendations General remarks

- Create model clauses from GAAR regulations in major countries.(China, Hong Kong, UK, Germany, France, USA, Belgium, Australia, etc.)
- Refer to the common law principle.
- Refer to the Mongolian Civil Code.

Recommendation Add the base article of China GAAR.

- In addition to Mongolian Draft, additional provisions such as Article 47 of corporate income tax, which are the basic laws of China's GAAR, will be GOOD.
- Article 47 of corporate income tax of China
- "If a company's taxable income or amount of income decreases as a result of a series of arrangements without a reasonable business purpose performed by the company, the taxing authority shall have the right, to correct it, in a reasonable manner.
- The following key words in the Chinese Provision can also be helpful:
- 1. Substance over form
- 2. Reasonable commercial purpose

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Kodera's idea to draft: three points

- 1. Article 47 of the China Corporate Income Tax Act is will be used in a model GAAR general article.
- 2. In this article, add the essence such as the GAAR points of other countries, common law principles, and void transaction (invalid transaction) of Article 56 of the Mongolian Civil Code.
- 3. Consider what will be included in future regulations. Prepare from now.

Key points of the GAAR Act that can be used as reference in other countries (UK)

- UK: Section 5 of the Finance Act 2013 (Articles 206 to 215) Sheger 43Judgment criteria for abusive requirements (not for avoidance)
- (1) Whether the actual results of the structured transaction are consistent with the principles in the legislative intent of the tax law.
- (2) Is the process of producing the results planned or involves abnormal means?
- (3) Is the structured transaction intended to find defects in tax law provisions?

Key points of the GAAR Act that can be used as reference in other countries (USA)

- USA : Internal Revenue Code Article 7701 (o) ESD(Economic Substance Doctrine)
- 1. The transaction has changed the taxpayer's economic situation in a substantive aspect other than the federal income tax (an objective requirement)
- 2. The taxpayer has a different substantive purpose from the federal income tax in performing the transaction (subjective requirement).

Key points of the GAAR Act that can be used as reference in other countries (German Part 1)

- Germany: Article 5 of the Reich National Tax Law 1919, Article 6 of the Tax Adjustment Act 1934 (GAAR)"
- Abusing the form and formability of civil law cannot avoid or reduce tax burden"
- These are now obsolete.

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Germany's current GAAR provisions are Article 42 of the General Taxation Law (Abgabenordnung) (Germany 2)

- 1. (Inappropriate transaction: Kodera)A transaction is considered inappropriate if the legal form of the transaction selected by the taxpayer is not appropriate and an unrelated third party can presume that the transaction will not take place under the same circumstances.
- 2. (Tax advantage: Kodera)The form selected by the taxpayer results in a favorable tax relationship when compared to a properly performed transaction
- 3. (Correctness: Kodera)When the choice of format cannot be justified
- 4. (subjective factor)When the taxpayer intends to reduce the tax burden

Key points of the GAAR Act that can be used as reference in other countries (Belgium)

- Belgium : GRRA amendment in 2012
- Neighboring Netherlands does not use statutory law, but applies the "law of abuse of rights" established by case law for tax evasion. In Belgium case, there is a principle that respects private law transactions and recognizes them in tax law.
- Belgian Supreme Court bans abuse doctrine, doctrine of economic substance
- Court decides whether transaction is sham transaction
- Tax avoidance constitutes tax evasion if the taxing authority proves that:
- 1. sham transaction
- 2. Intention of tax avoidance by taxpayers

Key points of the GAAR Act that can be used as reference in other countries (Hongkong)

- Hong Kong: IRO (Inland Revenue Ordinance) Article 61 (Transactions and Dispositions to be Denied) Rules Established in 1947
- "If the assessor determines that the transaction that reduces or intends to reduce the tax burden is artificial or fictitious, or that the disposal of property has not actually taken place, the assessor will be able to deny the transaction or disposition, in which case the taxpayer will be taxed again.

Key points of the GAAR Act that can be used as reference in other countries (France)

- For both France and the Netherlands, private law principles of the exercise of genuine rights and the abuse of rights are applicable.
- <u>France : 1941 year</u>
- GAAR (French code of tax proceedings) Article 64
- 1. If the transaction turnable into authentic ones, the transaction is a sham
- 2. If the transaction is not deceptive but does not conform to the spirit of the law and is intended solely to avoid or reduce the amount of tax that a taxpayer would have to pay for a normal transaction (a law based on fraus legis), it is abuse of law.

Key points of the GAAR Act that can be used as reference in other countries (Australia)

- June 2013 Revision of GAAR rules for Income tax Assessment
- Article 177D: Requirements for applying GAAR
- 1. Article 177 : Scheme (arrangement)
- 2. Article 177 C: If the implementation of the scheme reduces taxable income and deducts that would not be permitted without the implementation of the scheme
- 3. The purpose of the person involved in the scheme is to obtain tax benefits

★ Tax evasion principle in common law (Anglo-American approach)

1 business purpose

(2) step transaction

(3) substance over form

- (4) sham transaction
- 5)economic substance

Article 56 of the Mongolian Civil Code (Invalid Transaction)

- 56.1 A transaction shall be deemed void if :
- 56.1.2 made fictitiously

Mongolian GAAR reference points

As a result of the above considerations, the following are the points in the GAAR general remarks prepared in Article 18 of the Mongolian Basic Law.

- Structured transactions look for defects in tax law provisions (section 5 of the Finance Act 2013) (UK)
- ESD : Economic Substance Doctrine) (USA)
- China GAAR Basic Principles (Substantialism, Economic Rational Business Purpose)
- Sham transaction&abuse of rights (France) (common law principle)
- Sham transaction(Belgium) (common law principle)
- Fictitious transaction(Hongkong)
- Abusing the form and formability of civil law (former Germany)

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Comments on the General Tax Law Revision and Corporate Income Tax Law Revision

Expert Kodera 27 August, 2018

Main revised provisions (Appendix attached)1 (other than transfer pricing)

- The General Tax Law, Article 15 (1) to (9), (Anti tax avoidance measures)
- Corporate Income Tax Law, Article 4 1.7a-j, (Source Rules)
- Corporation Income Tax Law, Article 6 (1) to (10), (PE)
- Corporation Income Tax Law, Article 14 (1) to (6), (Earnings stripping rule)
- Corporation Income Tax Law, Article 23 (1) to (10), (Foreign tax credit)
- Corporation Income Tax Law, Article 24 (1) to (4), (foreign tax credit)
- Corporation Income Tax Law, Article 31 (1) to (6), (CFC rule)

Major Amendments (Appendix attached) 2 (Transfer pricing taxation)

- General Tax Law Article 6 (Definition of TP terms)
 - Article 16 (Mutual agreement procedure)
 - Article 26 (Related parties)
 - Article 36 (TP concept)
 - Article 37 (TP documentation)
 - Article 38 (TP audit)
 - Article 39 (TPM)
- Corporate Income Tax Law, Article 27 (TP Documentation: Country by country Report)

The definition of GAAR (The main issue in tax avoidance is tax arrangement)

Article 18

(1) Definition of tax avoidance

If the taxpayer has performed both of the following actions (1) and (2), the head of tax office considers this as tax avoidance and adjusts the tax under this section.

1. Taxpayers enter into tax avoidance transactions with no economic substance and no business purpose.

2. Taxpayers have gained tax benefits through a tax avoidance scheme based on the tax avoidance transaction.

(2) Tax adjustment

1. If the head of Tax office recognizes the tax evasion action described in item (1), he/she is authorized to deny the tax benefit gained by the taxpayer.

2. Due to the authority specified in above 1, the head of tax office may impose a tax on such tax evasion.

The definition of GAAR (The main issue in tax avoidance is tax arrangement)

(3) Tax avoidance scheme

1. Based on agreement

It means structured transactions, agreements, systems, understanding, promises, businesses, etc., whether they are explicit, legal, or enforceable.

2. Based on a concept

Refers to plans, proposals, actions, and various actions.

(Refer to Article 177A of the Australian Income Tax Law.)

(4) Obtaining tax benefit by tax evasion

- 1. Taxable income is reduced through the introduction of tax evasion schemes
- 2. A deduction is made that is not allowed without the implementation of the scheme For example, loss carry over, loss carry back (transfer the loss to the previous years with prifit and receive a refund of the CIT paid), foreign tax credit, withholding tax, tax exemption, etc. (Refer to Article 177C of the Australian Income Tax Law.)

Include the definition of the TP tax system in the General tax law (Refer to Article 66-4① of the Japan Special Taxation Law)

What is transfer pricing taxation?

In each fiscal year, when a corporation engages in the sale of assets, the purchase of assets, the provision of services, and other transactions with a foreign party related to the corporation, the corporation will If the consideration paid by the party is less than the arm's length price, or if the amount paid by the corporation to the foreign affiliate exceeds the arm's length price, the income of the corporation for the relevant business year with respect to the application of the provisions of the Corporate Income Tax Law and other corporate tax laws and regulations, such foreign-related transactions are taxed as if they had been made at arm's length prices.

It is not enough to include TP-related terms in Tax audit section of the General Tax Law

- Reason: it will mislead taxpayers
- In other words, if the terms related to TA are included in the tax audit section, taxpayers will not be able to get a correct understanding of the law, since they believe that these systems are used only by tax authorities and they do not need to know them, and the implementation of the law and tax audit will be difficult.
- In the case of a TP, the taxpayer himself must prove the legitimacy of the business of an affiliated company by the principle of an independent company under the TP system in a documentation system. Therefore, it is wrong to include TP-related definitions only in the tax audit section of the General Tax Law.

Include a definition of TPM in the General tax law (TPM: Transfer Pricing Method)

 \star The following "compact explanation" should be included in TPM (Transfer Price Calculation Method).

 \star Comparable uncontrolled price method (CUP method) is a method of making necessary adjustments to the non-controlling market price of same or similar products.

 \star The resale price method is a method used to reduce the price of goods sold (resale price) to buyers that are not independent of the seller by the sum of the total profits of the primary seller.

 \star The cost-based method is the method of adding the appropriate amount of profit, calculated on the basis of the normal rate of return, by comparing the profit ratio of the seller and the reseller.

 \star Transactional Net Margin Method (TNMM) is a method of calculating arm's length price using the operating margin for sales or markup ratio for total cost for each transaction.

★ The profit split method (PS method) is a method of dividing the profit to be split, which is the sum of the operating profits of both related parties, according to factors that contribute to the generation of income, such as the amount of expenses.

Transfer Pricing: Best Method Rule

Japan Special Measures Act 66-4-2

- Price between independent entities is a transaction that has an external relationship, depending on whether it is the sale or purchase of an inventory, or other types of transactions, among the following methods, the content of the transaction, the role of the related parties and other conditions The price is chosen based on the best way to calculate the actual price that would have to be paid if the transaction was performed on simple terms between the individual entities.
- CUP method, RP method, CP method, PS method, TNMM

Stipulate transfer pricing documentation system in the General tax law

• 1. Country-by-country reporting

The domestic corporation, etc., which is the ultimate parent company of the multinational corporate group, shall determine the amount of income, profit before tax, tax paid, and other necessary matters for each country in which the multinational corporate group operates at the end of the fiscal year, and within 1 year from the next day, it must be provided to the chief of tax office by using an e-tax.

Business Overview Reporting

Domestic corporations that are members of the multinational corporate group, etc., must report the organizational structure, business outline, financial status, and other necessary matters (business overview report) of the multinational corporate group on the day after the end of the fiscal year, and within 1 year from the next day, it must be provided to the Chief of Tax Office by using an e-tax.

Stipulate transfer pricing documentation system in the General tax law

3. Documents deemed necessary to calculate arm's length price (local file)

A corporation that has entered into a foreign-related transaction must prepare documents (including electromagnetic records) deemed necessary to calculate the arm's length price for the foreign-related transaction by the deadline for filing a tax return,

- 4. Important documents in local files
- Detailed functional analysis among related parties and risks to be borne
- Optimal TPM and the reasons for its selection
- Independent company related financial indicator information
- Difference adjustment

Stipulate new provision on TP adjustment

(Special case of amendment in case of agreement based on tax treaty)

- If there is an agreement between the Minister of Finance and the competent authority of the partner country, etc. according to the tax treaty, and if there is a reduction in the amount of income for each fiscal year of the domestic corporation in Mongolia and the domestic corporation requests corrections, then the head of the tax office can make an adjustment in the amount of income based on the content of the agreement
- Adjustment Request: the taxpayer asks the state to refund tax due to a decrease in income.

Stipulate new provision on Adjustment request:

In the result of mutual agreement based on a tax treaty, if an agreement different from the initial filing, the taxpayer can request an adjustment within two months from the day following the date on which the agreement was made.
 If the tax administration makes adjustments based on a mutual agreement procedure, adjustments may be made for up to five years period.

★ Underlined periods should be considered in Mongolia

Set a grace period for special cases of taxation on transactions with foreign parties

- If a domestic corporation makes an adjustment request under the tax treaty to the Commissioner of the National Tax Agency under the tax treaty provisions, the head of the tax office, based on the application of the person who filed this request, can postpone tax payment, such as the amount of the corporate tax and the amount of local tax to be paid by the correction decision, as well the additional tax, for a period up to one month (so called the "grace period") following the date of the adjustment based on the agreement with the competent authority of the treaty partner country.
- Provided, however, that this shall not apply if there is a delinquency of national tax for the person making the application.
- When the head of the tax office, etc., suspends the payment of tax in accordance with the provisions of the previous paragraph, he/she must receive a security equivalent to the amount of the suspension.

Be part of the BEPS Prevention Convention.

What is the BEPS Prevention Convention?

1. Official name, etc.

Official name: Multilateral Convention on the Implementation of Tax Convention-Related Measures to Prevent BEPS

English name: Mutual Convention to implement Tax Treaty Related Measures to prevent BEPS

English abbreviation: Mutual Instrument (MLI)

Significance: Multilateral treaties enacted under the BEPS Action Plan 15 (Development of multilateral agreements)

Objective: Since existing bilateral tax treaties are different, it is time-consuming to incorporate a certain level of tax avoidance measures into all of these tax treaties. There was a judgment that the method in which the countries concerned participated was preferable.

Signing countries (68 countries) on June 7, 2017 (8 countries)

Composition of the Convention-Article 39

2. Japan's accession to the conventions (signed June 8, 2017)

Comments on the revised Corporate income tax law

Include a provision defining PTM in Corporate income tax law, somewhat more detailed than the General tax law

Comparable uncontrolled price method (CUP method)

It is a method of determining consideration for a transaction in which related seller and buyer bought and sold inventories of the same type as the foreign-related transaction based on price of transaction at the same transaction stage, transaction volume, and other conditions between unrelated parties (If there is a transaction in which the same type of inventory is traded with the foreign-related transaction in a situation where there is a difference in the transaction stage, transaction volume, etc., if the difference in the amount of consideration resulting from the difference can be adjusted, the adjustment shall be made).

Include a provision defining PTM in Corporate income tax law, somewhat more detailed than the General tax law

Resale price method (RP method)

Resale price method is a method using the price calculated by reducing price of inventory (hereinafter as "resale price") sold to unrelated buyers by ordinary profit of the original seller.

Cost-based method (CP method)

This refers to the method of adding the amount of ordinary profit (The amount calculated by multiplying the amount of the cost by the ordinary profit rate specified by a Cabinet Order.) to the cost of purchasing, manufacturing, or otherwise acquiring the inventory of an inventory related to a foreign-related transaction as the consideration for the foreign-related transaction.

Include a provision defining PTM in Corporate income tax law, somewhat more detailed than the General tax law

Profit split method (PS method)

The profit split method is a method of dividing the transaction profit of related parties, taking into account factors such as the cost of generating such revenue.

1. <u>Comparative profit split method</u>

Method of calculating based on attributable to a corporation and its foreign affiliates in proportion to the distribution of income related to the sale of inventories or the same or similar type inventories, which relates to the foreign related transaction by unrelated parties.

2. Contribution analysis of profit split method

Method splitting the profit gained from transactions carried out by related parties based on the cost factor of each party involved in generating such profit.

Complete the definition of a related party of the transfer pricing system 1

Foreign-related party: Foreign corporation with a special relationship with the corporation

- 1. Relationship in which one of the corporations, directly or indirectly, owns at least 50/100 or more of the total number or amount of issued shares or contributions of the other corporation
- 2. The relationship between the two corporations when the same person holds, directly or indirectly, more than 50/100 or more shares or investment in issued shares, etc., by the same person (sister company)

Complete the definition of a related party of the transfer pricing system 2

- 3. Due to the facts listed below and other similar facts, the relationship in which one of the two corporations can substantially determine all or part of the business policy of the other corporation (substantial control relationship)
- A half or more of the other corporation or an officer with authority to represent is a person concurrently serving as the one officer or employee or a person who was an officer or employee of the one corporation
- Most of the activities of the legal entity are dependent on transactions with the other legal entity.
- Most of the financial resources required for the operation of a legal entity must be borrowed from another legal entity or obtained with a guarantee from this legal entity

The balance between the earning stripping rule and the thin capitalization is theoretically excellent.

- The introduction of a earning stripping is highly appreciated. But the existing thin capitalization system also needs to be retained.
- Japan is implementing the thin capitalization tax system and earning stripping rule parallelly. While both are constraints in the inclusion of interest payments on costs, they are theoretically advantageous to use the two methods in parallel, as they indicate differentiating factors, such as income and assets.
- In Japan, where there is no possibility of taxing within the framework of a thin capitalization tax system, taxation by the earning stripping rule is possible.
- Germany has only the earning stripping rule, France has the only thincapitalization tax system, thus it is no imbalance. In the United States, if the ratio of assets and liabilities is 1.5:1 and is not covered by the earning stripping rule.

Double taxation will not be resolved unless the foreign tax deduction system allows the excess or surplus carryover. Part 1

- Deduction surplus: The amount of the deductible foreign corporation tax in each fiscal year when the amount is below the deduction limit for the relevant fiscal year.
- Exceeding deduction limit: The excess amount of deductible foreign corporate tax in each fiscal year when it exceeds the total deduction limit for corporate tax in the relevant fiscal year. The above is permitted to carry forward for three years.

Double taxation will not be resolved unless the foreign tax deduction system allows the excess or surplus carryover. Part 2

The amount of foreign corporate tax paid by the domestic corporation in each fiscal year is

- (1) First, deduct from the corporate tax to be paid domestically in the relevant business year.
- (2) If the deduction cannot be made, deduct it from the local tax.
- (3) If the deduction still cannot be made, the following shall apply.
 - a. In each fiscal year started within three years before the start of the fiscal year, if there is "national tax surplus", deduction shall be made from the oldest fiscal year, up to the amount carried forward.
 - b. If the "National tax deduction surplus" is generated in the fiscal year, the carry-forward deduction could not be done due to the occurrence of "Exceeding the deduction limit" in each fiscal year started within three years before the start of the fiscal year Deductions will be made sequentially from the earliest business year up to the remaining amount after deducting the amount of the deductible foreign corporate tax to be paid in that business year.

It is important to establish a new provision for tax haven measures (Article 66-6 of the Japan Measures Law) Part 1

2017 revision • TH tax system in Japan

(1) Taxpayers and foreign affiliates

The tax-haven tax system is applicable when the Company directly or indirectly owns or controls 10% or more of the shares of foreign affiliated companies.

• Here, the foreign affiliated company refers to a foreign company in which more than 50% of the total number of issued shares is owned or substantially controlled by a domestic company.

It is important to establish a new provision for tax haven measures

(Article 66-6 of the Japan Measures Law) Part 2

(2) Specified foreign subsidiaries (exemption from system application based on tax burden ratio)

Foreign affiliates are classified as specific foreign affiliates, and correspond to paper companies. This specific foreign affiliate is basically subject to combined taxation on a company-by-company basis, but if the tax burden ratio is 30% or more, the combined taxation will not be performed.

(3) Economic activity standards and applicable foreign affiliates (Exemption from application of the system based on the tax burden ratio) Among the foreign affiliates, if the above-mentioned specific foreign affiliates do not meet the economic activity standards, they will be subject to combined taxation on a company-by-company basis.

 \star Economic activity standards: Is it economically reasonable for a subsidiary to conduct business in that country? Check.

(4) However, even if the economic activity standards are met, passive income such as dividends and interest will still be subject to combined taxation.

The domestic source income of foreign corporations should be organized and regulated. Review of Japanese rules: Corporate tax

Japanese domestic source income of the CIT law

- 1. PE attributable income
- 2. Income not attributable to PE
- Income from management of domestic assets: interest, dividends, royalties, etc.
- ➡ Withholding income tax only (not subject to corporate tax)
- Income from transfer of domestic assets: Income from transfer of real estate, transfer of shares issued by domestic corporations, etc.
- ➡Taxation of Corporate income tax
- Income of human service provision business in Japan: Business that provides services such as movie actors, lawyers, etc.
- ➡Taxation of Corporate income tax
- Income from lending domestic real estate, lending of quarrying rights, consideration for setting mining rights under the Mining Law, etc.
- ➡Taxation of Corporate income tax
- Other domestic source income: income from insurance, compensation, damages, and asset donations received in domestic operations, etc.
- ➡Taxation of Corporate income tax

The domestic source income of foreign corporations should be organized and regulated. Examination of Japanese rules: Income tax

Regarding the relationship with the withholding of income tax, regardless of the presence or absence of PE and regardless of the classification of PE attributable income and PE non-attributable income under the Corporation Tax Law, those that fall under the definition of domestic source income under the Income Tax Law, it is withheld the withholding tax.

Review Japan's domestic source income rules

Part 3-Corporate tax of foreign corporations

Chapter 1 Domestic Source Income

Article 138, paragraph 1

No. 1: When a foreign corporation conducts business through a permanent establishment (PE), if the PE is a business entity that operates independently of the foreign corporation, income to be attributed to the PE, taking into account that the functions performed by the PE, assets used in the PE, internal transactions and other conditions between the PE and the head office of the foreign corporation, etc.

★ In this way, "income attributable to PE" should be stipulated in Mongolian domestic law as the first "domestic source income" of a foreign corporation. Because it is a rule of "domestic source income" of a foreign corporation, the principle of Article VII of the OECD Model Treaty of "No tax if there is no PE" and the principle of Article 138 of the "AOA Principle", As in the paragraph, "Must include general and principle provisions for national Now-sourced income.

- No. 2: Income arising from the operation or holding of domestic assets
- Item 3: Income arising from the transfer of domestic assets specified by a Cabinet Order
- No. 4: Consideration for the provision of human services provided by corporations specified by a Cabinet Order
- No. 5: Real estate in Japan, right to play over real estate in Japan, quarrying right under the quarrying law, establishment of mining right under the Mining Law, or Article 2 (3) of the Income Tax Law Residents who stipulate
- Item 6: In addition to the items listed in the preceding items, those whose source is domestic income specified by a Cabinet Order
- \bigstar The Japanese corporate tax law stipulates the above six domestic source incomes, and details are stipulated in the enforcement order. No. 1 is income attributable to PE, and Nos. 2 to 6 are income not attributeable to PE.

Agent PE is important so don't forget the rules

- Article 2 of the Japanese Corporation Tax Law (Definition)
- Article 2 (foreign corporations): Refers to corporations other than domestic corporations.
- Article 12-12 (Permanent Facilities: PE)
- (I) Branches, factories, and other places in the domestic business of a foreign corporation that are specified by a Cabinet Order
- (B) Construction workplaces in Japan of foreign corporations (foreign corporations carry out construction work in Japan (construction, installation, assembly, and other work or the provision of services for supervising such work for more than one year) Location, including the construction work, etc. of the foreign corporation in Japan No.)
- (C) A person who has the authority to conclude a contract for himself / herself with a foreign corporation in Japan, or a person equivalent thereto, as specified by a Cabinet Order
- ★ This C is slightly stipulated in the Mongolian Corporate Tax Law 63 under the Mongolian laws and regulations, but since it is an important concept called "agent PE", it must be specified in detail. Without this provision, PE tax audits would not be legally perfect.

Consideration of Agent PE

- This C is somewhat stipulated in the Mongolian Corporate Tax Law 63 under Mongolian laws and regulations, but it is an important concept called "agent PE", so it must be specified in detail. Without this provision, PE tax audits would not be legally perfect.
- ★ The agent PE may be an individual or a corporation. In any case, for example, if an individual or a corporation that receives business instructions from a foreign corporation makes a profit in Mongolia, the profit will be the domestic source income of Mongolia. Therefore, Mongolia can levy corporate tax on foreign corporations. It is also stipulated in Article 5 (1) and (2) of the OECD Model Convention.
- ★ An agent who receives business instructions dependently on a foreign corporation is called a "dependent agent" and receives PE tax, but an agent who does not receive instructions from a specific foreign corporation is an "independent agent" And no PE tax.
- ★ Permanent facilities are usually "PE" of "foreign corporation" from the above definition. However, domestic corporations also have PE overseas. Details are specified by a Cabinet Order.
- (reference)
- OECD Model Tax Convention Article 5 (PE)
- Article 5 (Provision of Dependent Agent)
- "... If a person acting on behalf of a company has the authority to enter into a contract in the name of that company in one Contracting State and acts repeatedly, this company will, For all activities performed by that person on behalf of the company, it shall have permanent facilities in that one Contracting State "
- Clause 6: Independent Agent Rules

Technical cooperation deliverables

Investigation report about delinquency arrangement and notice

Project to enhance tax collection process and international tax issuance of Mongolian tax administration

Tax Collection Expert Kosaka Mitsuru Tax Collection Expert Shigeo Kumakura 2017.12.15

INVESTIGATION REPORT ABOUT DELINQUENCY SETTLEMENT AND NOTICE

I Current status of delinquency settlements

1. Basic concept of non-payment arrangement

Tax delinquency means that taxes are not paid before the due date and that a reminder (payment notice) has been issued. Delinquent taxpayers are referred to as "nonpayers". The nonpayment is caused due to various circumstances such as economic situation at that time and/or cash flow situation of individual delinquent taxpayers. Thus, tax authority should handle delinquencies based on law by considering the facts such as the status of business and life, possession of property, determining taxpayer situation correctly.

In order to apply the law properly and to execute it fairly and efficiently, it is not enough to simply establish a legal system, but it is also necessary to establish executing structure.

In practice, effective and appropriate delinquency management with limited human resource and budget, regarding large-scale cases, malicious cases, and other cumulative and prolonged cases and cases that require early processing, it is necessary progress management, deep investigation of causes, and direction of processing. In order to handle non-payment, the authority should be focused on the amount of work and promote the processing. On the other hand, for small-scale delinquency cases with less work, it is necessary for the authorities to efficiently contact more delinquents and complete the payments.

In this way, a balanced administrative operation should be maintained whiles achieving multiple goals simultaneously, the balance between new delinquency and existing delinquency, the balance between large delinquency and small delinquency, the balance between each tax item, the balance of guidance management between tax office and GDT.

In the following, the current status of the delinquency settlement in Mongolia will be examined from the above viewpoint.

2. Tax delinquency statement

The table below shows the trend of delinquency balance for 2014, 2015, and 2016. (Tax delinquency status)

Project to enhance tax collection process and international tax issuance of Mongolian tax administration

	2014	2015	2016
А		(108.2)	(89.1)
Collection confirmed amount	2,229.8	2,412.0	2,148.5
В		(153.4)	(71.6)
Newly accrued arrears	226.4	347.3	248.6
(B÷A)			
arrears rate	10.2	14.4	11.6
С		(137.7)	(82.6)
Amount carried forward in previous period	611.4	841.9	695.0
D(B+C)		(141.9)	(79.3)
Non-payment arrangement required	837.8	1,189.2	943.6
Е		(123.8)	(69.1)
Arranged amount	399.2	494.2	341.3
(E÷D)			
Arrangement rate	47.6	41.6	36.2
F Amount carried forward		(158.5)	(86.7)
(Arrears balance)	438.6	695.0	602.3

(Unit:% 1 billion Tg)

[Comments]

(1) Collection confirmed amount

The final collection amount for the most recent three years is 2,229.8 billion Tg in 2014 (hereinafter indicated as "Tg"), 2,412.0 billion Tg in 2015, (108.2% compare to the previous year), 2,148.5 billion Tg in 2016 (89.1% compared to the previous year), and it turns decreased in 2016.

(2) Need for newly generated delinquency amount and delinquency settlement

The latest delinquency in the three most recent years was 226.4 billion Tg in 2014, 347.3 billion Tg in 2015 (153.4% compare to previous year), 248.6 billion Tg in 2016 (71.6% compared to previous year), about 30% decrease in 2016. In addition, the amount of required collection of new tax delinquency added to the amount carried forward in previous fiscal year is 837.8 billion Tg in 2014, 1,189.2 billion Tg in 2015 (141.9% compared to previous year), and 943.6 billion Tg in 2016 (79.3% compared to previous year)

(3) Arranged amount and balance of delinquency

The most recent three-year arranged amount is 399.2 billion Tg in 2014 and 4,942 Tg in 2015 (123.8% compared to the previous year), 341.3 billion Tg in 2016 (69.1% compared to the previous year). In 2015, tax arrangement was progressed, but in 2016 the amount decreased by about 30%.

The delinquency balance was 438.6 billion Tg in 2014, 695 billion Tg in 2015 (158.5% compared to the previous year), and 602.3 billion Tg in 2016 (86.7% compared to the

previous year).

(4) Summary

Confirmed collected amount, newly accrued arrears, arrears required to be rearranged, a rearranged amount, and delinquency balance are in contrast to 2015, which increased by 30-50% compare to previous year, it turned to a decrease of 20-30 in 2016 and the balance of delinquency is being reduced.

However, the balance of delinquent payments is being reduced in 2016, but the rearranged amount is decreased by about 30% compare to previous year, 150 billion Tg.

In the future, it is necessary to review the executing structure and reduction measures based on the legal system.

(2) Delinquency status by tax amount level

< delinquency status by tax amount level by 2016>

(unit: million Tg, %)

		1	1		r			,
	ratio	1.4	1.6	3.9	10.6	6.2	76.3	100.0
Total	Q'ty	14,746	17,712	42,074	114,832	67,655	830,885	1,087,904
L	ratio	83.9	6.5	4.9	3.4	0.6	0.7	100.0
	Q'ty	5 129,824	10,051	7,591	5,307	696	1,015	154,757
LTO	amount	5	25	158	1,622	3,256	497,458	502,525 154,757
Ľ	Q'ty	23	12	24	59	44	161	323
Capital (1city, 9 districts)	amount	9,716	13,927	34,492	96,683	55,482	276,164	486,464
Capital (distr	Q'ty	65,511	7,848	6,214	4,490	793	735	85,591
Province	amount	5,024	3,760	7,423	16,527	8,917	57,264	98,915
Prov	Q'ty	64,290	2,191	1,353	758	132	119	68,843
		$1 \sim 990,000 \mathrm{Tg}$	$100{\sim}2,990,000{ m Tg}$	$300{\sim}9,990,000{ m Tg}$	$1,000 \sim$ 49,990,000Tg	$5,000\sim$ 99,990,000Tg	100,000,000 I g	Total

[Comments]

(GDT Tax collection dept.)

9 districts) tax office are each responsible for half of total number, but the tax amount is only 1.4% of the total. On the other hand, the number of tax delinquency over 100 million Tg is only 0.7% of the total number, but it accounts for 76.3% of the total tax amount, also The number of non-payment tax amount less than 990,000Tg accounted for 83.9% of the total, and the prefecture and the capital (1 city, the LTO Department is responsible for about 60%. (3) Delinquency status by tax item

<Delinquency status table for 2016 national tax and local tax>

(As of December 31, 2016)

(unit: million Tg,%)

classification		t carried vard	For fise	cal year		То	otal	
	number	amount	number	amount	number	ratio	number	ratio
(National tax)								
CIT	12,561	43,441	26,433	281,919	38,994	62.8	325,360	39.9
VAT	9,164	161,529	13,568	195,638	22,732	36.6	357,167	43.8
Special tax	33	2,471	41	15,168	74	0.2	17,666	2.2
(Tabaco, alcohol								
etc.)								
Mineral resource	100	44,515	127	55,808	227	0.3	100.357	12.2
use tax								
Others	24	15,726	0	0	24	0.1	15.726	1.9
		Total			62,051	100.0	816,276	100.0
(Local tax)								
PIT	14,011	24,515	28,960	62,937	37,954	38.3	87,450	75.9
(salary	(11,040)	(24,360)	(28,949)	(62,930)	(34,982)		(87,290)	
withholding tax)								
Uncertain income	282	8	3	0	285	0.3	8	0
tax								
Immoveable	7,303	6,769	9,102	11,904	12,229	12.3	18,673	16.2
property tax								
Stamp tax	20	323	102	1,003	114	0.1	1,326	1.2
Mineral resource	48	1,300	105	478	139	0.1	1,777	1.5
use tax								
Vehicle tax	9,631	1,520	32,284	4,395	38,914	39.2	5,915	5.1
Land tax	6,680	17	4,201	2	9,578	9.7	20	0.1
		Total			99,213	100.0	115,169	100.0
Note) Taxes such a	s additional	tax and pen	alty are not	considered.				

(Note) The total number of delinquents in the total column for both national and local taxes indicate the total number of people (the same delinquent may have both delinquencies and tax returns, or may be delinquent in multiple tax items)

[Comments]

Looking at the status of delinquency by tax item, the national tax consists of 2 taxes such as corporate tax (62.8%) and value added tax (36.6%) and it accounted for most (99% of the total), and amount wise these 2 taxes item amount were about 83% of the total. Regarding, local tax consists almost by individual income tax including withholding income tax and outstanding for both the number of delinquents (38.3%) and the amount of delinquency (75.9%).

The number of delinquent (39.2%) of vehicle tax is also stands out.

(4) Delinquency status by period

<Payment status by period (year) >

(as of August 1, 2017)

8				Total				LTO			Capital city			Prefecture	
		Indicator	Arrear	amount, balance, filing t	урс	ratio	Arrear a	mount, balance, filin	ig type	Arrear a	mount, balance, filing	g type	Arrear an	ount, balance, filin,	g type
1		A	Declared	tax audit	total		Declared	tax audit	total	Declared	tax audit	total	Declared	tax audit	total
		Number of taxpayer	126,619	6,757	128,123	100.0	301	79	238	73,738	4,642	74,365	52,580	2,036	53,520
Arrears a	imount	Amount	826,194,937.1	139,820,399.2	966,015,336.2	100.0	315,468,952.7	52,656,283.0	368,125,235.7	421,438,681.2	79,582,334.8	501,021,016.0	89,287,303.2	7,581,781.4	96,869,084.6
and ba		of original tax	826,194,937.1	90,313,785.8	916,508,722.9	94.9	315,468,952.7	34,487,748.1	349,956,700.7	421,438,681.2	51,485,634.2	472,924,315.4	89,287,303.2	4,340,403.6	93,627,706.8
and ba	nance	which additional tax	-	49,506,613.3	49,506,613.3	5.1		18,168,535.0	18,168,535.0		28,096,700.6	28,096,700.6		3,241,377.7	3,241,377.7
		Number of taxpayer	49,586	1,489	50,864	39.7	202	46	112	27,189	687	27,552	22,195	756	23,200
	2017	Amount	424,298,138.5	59,231,796.5	483,529,935.1	50.1	233,276,374.3	38,272,237.8	271,548,612,1	154,832,686.2	18,536,719.9	173,369,406.1	36,189,078.0	2,422,838.8	38,611,916.8
	2017	of original tax	424,298,138.5	39,011,020.9	463,309,159.4	50.6	233,276,374.3	24,001,943.7	257,278,318.0	154,832,686.2	14,153,648.2	168,986,334.4	36,189,078.0	855,429.0	37,044,507.0
		which Interest, arrears tax, additional tax	-	20,220,775.7	20,220,775.7	40.8	-	14,270,294.1	14,270,294.1		4,383,071.7	4,383,071.7		1,567,409.8	1,567,409.8
		Number of taxpayer	51,014	1,271	51,627	40.3	52	10	61	30,342	604	30,656	20,620	657	20,910
		Amount	145,064,082.0	14,828,616.7	159,892,698.7	16.6	31,390,282.1	1,190,541.2	32,580,823.3	90,708,411.7	12,423,786.2	103,132,197.9	22,965,388.3	1,214,289.3	24,179,677.6
	2016	original tax	145,064,082.0	9,968,751.4	155,032,833.5	16.9	31,390,282.1	1,091,697.0	32,481,979.0	90,708,411.7	7,902,395.7	98,610,807.4	22,965,388.3	974,658.8	23,940,047.0
	a e	which additional tax		4,859,865.2	4,859,865.2	9.8	-	98.844.2	98.844.2	-	4,521,390.5	4,521,390.5		239,630.6	239,630.6
		Number of taxpayer	22,569	1,567	22.308	17.4	22	6	28	14,289	1,311	13,825	8,258	250	8,455
		Amount	83.049.522.6	23,167,527,3	106.217.049.9	11.0	22,709,511.8	6.406.762.9	29,116,274,7	46,958,415,1	16,189,837,2	63,148,252,3	13.381.595.7	570,927,2	13,952,522,9
	2015	of original tax	83,049,522.6	11,849,727.7	94,899,250.3	10.4	22,709,511.8	3,065,671.4	25,775,183.2	46,958,415.1	8,439,920.5	55,398,335.6	13,381,595.7	344,135.7	13,725,731.4
	seva.v.	which additional tax		11,317,799.6	11,317,799.6	22.9	-	3,341,091.5	3,341,091.5		7,749,916.7	7,749,916.7		226,791.4	226,791.4
		Number of taxpayer	16.059	899	16,679	13.0	12	8	18	12,158	591	12,536	3,889	300	4,125
		Amount	50,921,758,2	12,908,083,9	63.829.842.1	6.6	8,404,099.4	2.576.554.2	10,980,653,6	34,947,829,8	9,219,407.4	44,167,237.2	7,569,829.0	1,112,122.3	8,681,951.3
	2014	, original tax	50,921,758,2	8,795,764,9	59,717,523,1	6.5	8,404,099,4	2.512.271.0	10,916,370,3	34,947,829.8	5,500,849,3	40,448,679.0	7,569,829.0	782,644,6	8,352,473,7
	strate	of Interest, arrears tax, additional tax	-	4,112,319,1	4.112.319.1	8.3		64,283,2	64,283,2	-	3,718,558,2	3,718,558,2	-	329,477,7	329,477.7
		Number of taxpayer	8,525	1,489	8,150	6.4	6	3	8	5,900	1,277	5,350	2,619	209	2,792
		Amount	51,653,804.5	11,441,879.3	63.095.683.8	6.5	7,881,060,2	1.659.347.3	9,540,407.5	38,040,146,7	9,075,620.4	47,115,767.1	5,732,597.5	706.911.7	6,439,509.2
of which	2013	original tax	51,653,804.5	8,094,758.9	59,748,563.4	6.5	7,881,060.2	1,265,325.4	9,146,385.6	38,040,146.7	6,411,420.7	44,451,567.5	5,732,597.5	418,012.8	6,150,610.3
50.250.000	source S	which Interest, arrears tax, additional tax	-	3,347,120.4	3,347,120.4	6.8		394,021.9	394,021.9	- 0	2,664,199.6	2,664,199.6	-	288,898.8	288,898.8
		Number of taxpayer	9,773	416	8,964	7.0	3	3	5	8,550	331	7,681	1,220	82	1,278
		Amount	21,063,145.5	4,937,958.3	26,001,103.7	2.7	715,183.3	392,175.9	1,107,359.3	17,984,872.1	3,511,592.5	21,496,464.6	2.363.090.1	1,034,189.8	3,397,279.9
	2012	original tax	21,063,145.5	2,831,500.6	23,894,646.1	2.6	715,183.3	392,175.9	1,107,359.3	17,984,872.1	1,785,870.1	19,770,742.1	2,363,090.1	653,454.6	3,016,544.7
	scars	which Interest, arrears tax, additional tax	-	2,106,457.7	2,106,457,7	4.3		-			1,725,722.5	1,725,722.5	-	380,735.2	380,735.2
		Number of taxpayer	3,900	1,069	4,883	3.8	1	1	2	2,600	1,001	3,533	1,299	67	1,348
		Amount	14,716,541.9	4,181,422.7	18,897,964.6	2.0	8,083,763.8	27,431.5	8,111,195.3	6,165,317.8	3,836,812.5	10,002,130.3	467,460.3	317,178.7	784,639.0
	2011	of original tax	14,716,541.9	2,743,549.5	17,460,091.4	1.9	8,083,763.8	27,431.5	8,111,195.3	6,165,317.8	2,520,062.9	8,685,380.7	467,460.3	196,055.1	663,515.4
	100 al 00	which Interest, arrears tax, additional tax		1,437,873.2	1,437,873.2	2.9		-			1,316,749.6	1,316,749.6		121,123.6	121,123.6
		Number of taxpayer	7,572	959	8,109	6.3	1		1	6,307	884	6,777	1,264	75	1,331
	1	Amount	12,739,607.0	2,208,561.3	14,948,168.3	1.5	2,498,329.7	1.00	2,498,329.7	9,948,526.1	2,099,780.1	12,048,306.2	292,751.3	108,781.2	401,532.5
		of original tax	12,739,607.0	1,652,941.1	14,392,548.1	1.6	2,498,329.7	1.00	2,498,329.7	9,948,526.1	1,584,076.6	11,532,602.7	292,751.3	68,864.5	361,615.8
		which additional tax		555,620.2	555,620.2	1.1		-			515,703.5	515,703.5	-	39,916.7	39,916.7
		Number of taxpayer	9,215	1,171	9,879	7.7	2	2	3	6,603	1,087	7,199	2,610	82	2,677
	2009	Amount	22,688,336.9	6,914,553.2	29,602,890.1	3.1	510,348.0	2,131,232.2	2,641,580.3	21,852,475.7	4,688,778.6	26,541,254.3	325,513.1	94,542.4	420,055.5
	and	original tax	22,688,336.9	5,365,770.8	28,054,107.7	3.1	510,348.0	2,131,232.2	2,641,580.3	21,852,475.7	3,187,390.2	25,039,865.9	325,513.1	47,148.5	372,661.5
	before	of which additional tax		1,548,782.4	1,548,782.4	3.1	-				1,501,388.4	1,501,388.4		47,393.9	47,393.9

(Note) The total number of taxpayers is the total number of people. (provided by GDT)

[Comment]

A Regarding the tax balance (although it was about 2% before 2012), it is assumed that the fiscal year will be arranged to some extent by the final tax return in February 2018.

However, it currently accounts for 50.1%. In 2016, it accounts 16.6%, in 2015 accounts 11%, and 77.7% in the last three years.

In terms of the number of delinquents, the ratio of delinquents in the last three years was 28.0% in FY2017, 28.5% in 2016 and 17.4% in 2015, accounting for 73.9% of all delinquents.

B The reason of number of delinquents for the recent three years and the large balance is that the Mongolian economy was in the process of growth until 2012, and the booming economy continued. But, since 2014, the economy stagnated and during the last three years

the domestic economy suddenly deteriorated, making it difficult for taxpayers to raise funds.

C On the other hand, as an execution factor, it is assumed that the response of the execution system is behand for the increase in new delinquency. As for the promotion of the process of arranging the number of cases with low amount, the establishing of the Notification Center in 2016, but the situation has not been able to catch up with newly added arrears with efficiency and also measures for high amount delinquency is not enough.

It is necessary to handle high amount delinquency based on a solid response, focus on systematic efforts to promote processing. Specifically, an early and accurate treatment policy, thorough individual progress management and extremely clear instructions and confirmation of processing status is needed by the administrator.

II Tax delinquency settlement status

1. Recent delinquency status

Delinquency status in FY2016

(as of December 31, 2016)

1 2			X	(unit:	million Tg)
				Cumulative	amount
classification	1	Amount carr	ied forward	For fisca	al year
		delinquents	amount	delinquents	amount
Nonpayment to be	declared	77,093	532,968	247,187	2,079,411
collected, arrears (excluding court duties)	audited	5,561	74,299	3,290	75,583
A : Total	82,654	607,267	250,477	2,154,994	
B: (paid out amour	nt of A)	61,053	327,9 75	205,927	1,964,8 69
C: $(A - B)$ target of an	rangement	21,601 279,2 92 44,550		190,125	
	(D	elinquency stat	us)		
Send notice	12,873	379,093	9,172	198,848	
Payment results by sen	ding notice	6,006	138,442	4,627	70,704
Stop bank account tra	ansaction	3,507	124,476	2,054	57,084
Payment result by s transactions	topping	1,563	46,804	1,291	37,031
Sending notice of colle property and sa		30	146	16	14
Payment result collecting and property	20	6	1	0.2	
Collateral collec	28	2,146	6	135	
Payment result collectin	ng collateral	19	828	2	23
Seizure		62	4,556	18	569

Payment result by seizure	40	1,072	18	189
Litigation	401	20,328	49	424
Payment results by court judgment	91	2,857	19	11

(GDT Tax Collection provided)

[Comment]

(1) The ratio of sending notices (reminders) to taxpayer subject to arrangement is

60% for amount carried forward and 21% for the declaration amount.

(2) Most of the delinquency settlement is suspension of transactions in bank accounts (the amount carried forward 3,507 cases, declared 2,054 cases), 46 cases from salaries, 34 cases as collateral collections and only very few 80 cases from seizures.

(3) Payment of only 110 cases (91 cases carried forward, 19 cases declared) out of 450 cases filed (401 cases carried forward, 49 cases declared) accounted for only 23%, therefore, there is concern about the stagnation of the case.

2. Recent efforts

(1) Efforts for small amount delinquency cases, large-scale, difficult-to-handle cases

There is almost no effort regarding small-amount arrears, large-amount arrears, and difficult-to-handle cases. But there are some efforts to promote organizing work effectively and appropriately with limited personnel and budget.

A. Efforts for small amount arrears

For the purpose of processing small amount delinquency cases at the initial stage efficiently, the Call center was established in March 2016.

B. Efforts for large scale and difficult-to-handle cases

- (A) Under the General Tax Law of Mongolia, corporations are registered at the tax office having jurisdiction over the location of the head office or permanent establishment, and individuals are registered at the tax office having jurisdiction over the place of business or address, and the registered tax office becomes the jurisdiction agency.
- (B) On the other hand, according to the provisions of GDT, the jurisdiction agency according to the taxpayer's sales scale is designated and distributed to the Revenue Management Bureau, the Capital City Tax Bureau and the Tax Office according to the scale. The Revenue Management Bureau is responsible for 300-400 large-scale corporations with capital city tax bureau is responsible for over 1,200 taxpayers of medium-sized corporations since January 2017
- (C) The tax collection department has been working on difficult cases,

designated to give guidance and advice to the tax office, but regarding small amount and large amount delinquent case, no particular organizational or institutional response. From FY2017, more difficult-to-handle cases will be arranged by categorizing the reasons for difficult processing into 7 categories.

[& categories for difficult-to-handle cases]

- a. Cases held by the Judgment Execution Court
- b. Cases held by general civil courts
- c. Cases where delinquents are dead, and no heirs or representatives of delinquent have died
- d. Incident confirmed by the court that the delinquent location is unknown
- e. Cases in 2007 that are not registered for renewal
- f. Cases that the National Registrar Office settled with remained delinquent tax
- g. There is a problem with the use of the VAT invoice, and it is pending in court
- (D) The tax collection office triggered the renewal of the PC at the two tax offices in the city in September 2017. Simultaneously the tax offices reviewed of personnel in charge of collection department and strengthened the execution system for delinquency settlement, worked on setting up sections in charge of large-scale and difficult-to-handle cases. This improvement plan is currently under review by the Administration Division and will be implemented.

[Major changes]

The main changes are as follows ("Reference 1" and "Reference Refer to Fee 2).

- (1) Review the number of staff in charge.
- (2) The delinquency in charge personnel will be divided into general cases, large scale and difficult cases, and department heads will be assigned to each section to give instruction.
- (3) The staff in charge of large-scale, difficult-to-handle cases have a high level of processing ability.

(Reference)

Looking at the years of collection experience of the staff of each tax office, 3 to 5 people

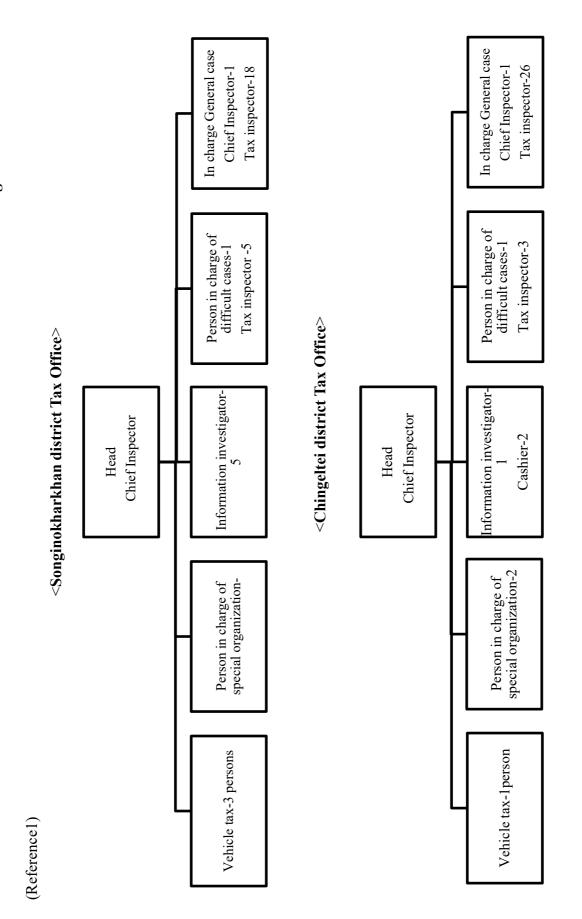
at the prefecture tax office, about 10 people at the district tax office are assigned experienced veteran officers. (see Reference 3).

(2) Business strategy for the year 2018

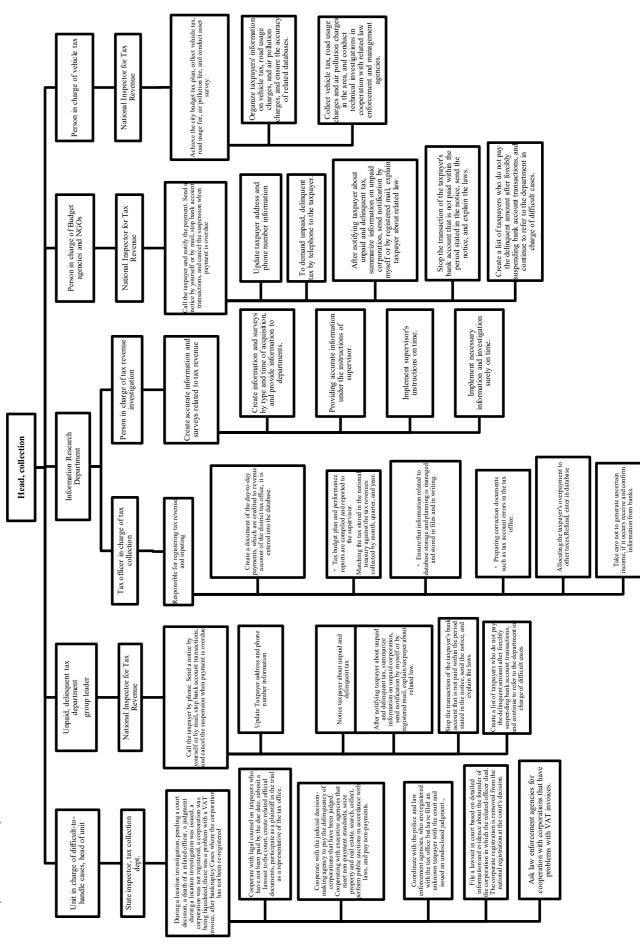
<Case management by segment method >

A Since FY2018, GDT has been examining the formal approach to case management by "segment method". It is designating taxpayer from the view of taxpayer service as taxpayer registration, tax return, tax audit and payment guidance (arrangement of delinquency). Specifically, taxpayers are classified into 4 segments as large-scale, medium scale, small scale and ultra-small-scale taxpayers based on sales amount and manage them that suits its segment.

B Specifically, it is classified as 50 million Tg or less, 50 million to 1.5 billion Tg, from 1.5 billion Tg to 5 billion Tg, more than 5 billion Tg by sales scale and manage them as a ultra-small taxpayer, small taxpayer, medium taxpayer, large taxpayer. The Revenue Management Bureau is responsible for large scale taxpayers, and capital city tax office is responsible for medium scale taxpayers.



(Reference 2)



		222				as of 4	October,20
Ne	Tax office	up to 5 years	6-10 year	11-15 year	16-20 year	21 years and more	Total
1	Arkhangai	11	7	4	3	2	<u>27</u>
2	Bayan-Ulgii	16	3	1	3	2	25
3	Bayankhongor	2	2	5	2	7	25
4	Bulgan	14	1	0	1	<u>7</u>	23
5	Gobi-Altai	5	7	3	3	6	24
6	Dornogobi	10	3	3	3	3	22
7	Dornod	16	3	2	1	3	25
8	Dundgobi	10	5	2	1	1	19
9	Zavkhan	6	4	4	3	10	27
10	Uvurkhangai	15	8	2	4	1	30
11	Umnugobi	19	3	3	1	1	27
12	Sukhbaatar	12	3	3	1	1	20
13	Selenge	19	8	3	3	<u>4</u>	37
14	Tuv	14	7	5	3	4	33
15	Uvs	15	6	2	4	2	29
16	Khovd	20	5	2	2	1	30
17	Khuvsgul	17	8	1	5	1	32
18	Khentii	8	6	7	2	5	28
19	Darkhan-Uul	<u>15</u>	8	4	<u>0</u>	1	<u>28</u>
20	Orkhon	18	5	1	1	2	27
21	LTO	8	4	2	Q	<u>1</u>	15
22	Capital city tax office	39	6	4	1	1	51
23	Tax revenue dept. of the Capital city	<u>0</u>	0	3	<u>0</u>	<u>0</u>	3
24		2	4	7	2	2	24
25	Bayanzurkh district	48	35	3	5	5	96
26	Sukhbaatar district	60	9	<u>15</u>	10	4	98
27	Bayangol district	<u>75</u>	15	<u>6</u>	5	3	104
28	Baganuur district	3	2	2	1	<u>0</u>	8
29	Bagakhangai district	2	0	<u>0</u>	1	<u>0</u>	3
30	Nalaikh district	8	3	3	<u>0</u>	1	<u>15</u>
31	Gobisumber	Q	2	<u>0</u>	1	<u>0</u>	3
32	Songinokhairkhan district	45	25	4	3	<u>1</u>	78
	Chingeltei district	14	15	4	3	3	39
34	Call center and Tax revenue dept. of GDT	5	5	2	4	5	<u>21</u>
3	Total	585	227	112	82	90	1,096

(Reference 3)

(Source: Tax revenue dept., GDT)

Technical cooperation deliverables

Report on the effect measurement and issues of the

notification center

> Tax Collection Expert Kosaka Mitsuru Tax Collection Expert Shigeo Kumakura 2019.11.30

REPORT ON THE EFFECT MEASUREMENT AND ISSUES OF THE CALL CENTER

I Operational status of the Call Center

1. Introduction

The Call center was launched per request of the Mongolian tax authority with the aim of reducing tax collection costs and reducing the amount of delinquent taxes and it has passed 3 year and 8 months since its establishment.

The goal of the Call center in this project is "to increase the number of cases to be processed from the start of the operation of the delinquency call center". The verifiable index is described as "The role of the notification center's work and the target cases (specifying the upper limit of the optimal delinquent amount.) are rearranged." So far, we have been making proposals and advice on improving work efficiency.

2. Operational situation

- The center has mechanized telephone notification work for "newly occurred low amount delinquency" at the 9 District Tax Office in Ulaanbaatar (extracting the person to be notified using a computer, automatic calling, summing of notification results, management of negotiation records, etc.) (Hereinafter referred to as the "automatic telephone notification system")). The operators (hereinafter referred to as "OP") are concentrated in one place, and tax payment notification is made by a small number of people, so that new late payments can be efficiently handled at the initial stage of non-payment. By processing this, the amount of paperwork was concentrated on the large and malicious delinquency of the tax office, and the attempt was made to organize the entire delinquency.
- 2) The Call Center has been operating on a trial basis at the 6 District Tax Office and 2 Provinces Tax Office for a year after the start of operations in March 2016. Specific operation policy (hereinafter referred to as the "New Operation Policy", and also attached work flow as described in "Reference 1") which focused on the filing deadlines and payment deadlines of each tax items stipulated by the Mongolian tax law was formulated, and based on this, the notification work was started. Efficient

tax notification has enabled by closely exchanging information with the tax office.

3) The tax items to be notified are non-payers¹ and delinquents² of the corporate income tax, personal income tax, and value-added tax (if the selected target person has a non-payment tax other than the above written 3 taxes, a tax notification is also made). In addition, the amount of tax subject to notification is limited to a total of one million MNT arrears (hereinafter referred to as "Tg").

Since then, reminding work have been carried out based on the new operation policy.

3. Notification performance and its evaluation

• The results of the notification for each year since 2016 are shown in the following table (1), and their evaluation is shown in (2).

(1) Notification performance for each year since 2016

(Unit: case, million Tg,%, times, person)

Period	case (A)	Pledged (B)	Pledged rate (B/A)	Target tax amount (C)	Paid amount (D)	Payment rate (D/C)	Number of notificatio n	OP
2016 (March to Dec.)	23,201	13,745	59.2	10,695	6,405	59.9	31,302	8
2017 (for a year)	50,389	31,706	62.9	12,215	7,459	61.1	39,930	8
2018 (for a year)	54,927	36,461	66.4	13,221	8,244	62.4	69,665	8
2019 (Jan. to Oct.)	42,503	26,486	62.3	9,682	5,946	61.4	44,245	8
合計	171,020	108,398	63.4	45,813	28,054	61.2	185,142	32

(2) Evaluation of the notification performance of each year

Looking at the notification results for each year since the start of operation in March 2016, as shown in the table in (1) above, the number of notification targets and the pledge of payment is increased since the start of operation in 2016.

The amount of tax to be notified, the amount of payment, and the number of notifications have been increasing year by year (Note that 2016 is a pilot operation in the operation start year, the notification period is 9 months, and regarding 2019, the figures are a reference, because the notice period is 10 months from January 1, 2019 to

¹ Non-payers: Taxpayers who have not paid their due tax on a monthly or quarterly basis.

² Delinquent: Taxpayers who have not paid tax that has passed the legal deadline

October 31, 2019.) and the pledge rate is also increased by 62.9% in 2017, 66.4% in 2018, shows that the notification effect has improved.

Looking at the tax amount, the tax paid by telephone notification reached 28 billion Tg as of the end of October 2019, and the ratio of the tax paid to the tax amount subject to notification was 61.1% in 2017 and 62.4% in 2018.

(Reference)

The results of the notifications from March 2016 to March 2017 when the operation started and the notifications from April 2017 to October 2019 based on the new operation policy are as follows:

1) Notifications performance from March 2016 to March 2017

Regarding notification result from the start of operation to March 2017 (however, March 2016 was a trial announcement for practically 12 months) there are 10,505 cases were paid or pledged, and the ratio to 22,577 cases subject to notification (hereinafter referred to as "payment pledge ratio³") was 46.5%. In addition, the number of cases returned to the tax office for reasons such as difficulties in making payments, incorrect information such as telephone numbers, or non-response was 12,072 cases, and the ratio of those who were notified (hereinafter referred to as the "return rate") was 53.5%.

The breakdown of the effect of the notice by department is as follows.

Tax Office name	Total	Pledg	ged]	Return to	tax offices	5	
	cases	case	ratio	incorre	ratio	unresp	ratio	Difficu	ratio
				ct		onsive		lt to	
								pay	
Sukhbaatar	4,975	1,589	31.9	1,048	21.1	1,807	36.3	531	10.7
Bayanzurkh	3,637	1,673	50.0	813	22.4	802	22.0	349	9.6
Songinokhairkhan	2,974	1,675	56.3	455	15.3	616	20.7	228	7.7
Khan-Uul	2,640	1,289	48.8	420	15.9	650	24.6	281	10.7
Bayangol	4,009	2,117	52.8	746	18.6	720	18.0	426	10.6
Chingeltei	3,543	1,793	50.6	566	16.0	892	25.2	292	8.2
Khovd prefecture	180	39	21.7	62	34.4	56	31.1	23	12.8
Bayankhongor pref.	95	48	50.5	14	14.7	25	26.3	8	8.5
Orkhon pref.	524	282	53.8	103	19.7	122	23.3	17	3.2
Total	22,577	10,505	46.5	4,227	18.7	5,690	25.2	2,155	9.6

(Breakdown by district tax offices)

(Unit: case,%)

(Notice) Payments and payment pledges include some partial payments.

³ The payment pledge rate is an index that measures the effect of the payment notification, which is the primary task of the notification center.

Notification performance from April 2017 to November 2018 2)

During the 20 months from April 2017, when the notice was started based on the new operation policy to November 2018, 72,088 out of 100,649 eligible people were called by telephone. As a result, the payment pledge rate was 63.6%, and the number of those who did not make a pledge due to allegations of difficulties in payment was 1,530, 2.1% of those who were notified. In addition, there were 24,697 cases that could not contact the delinquent, of which 7,350 (10.2%) due to inaccurate telephone numbers and 17,347 (24.1%) due to unresponsive.

(Notificat	ion result fi	rom 201'	7.4~2018.	(Unit: case,%)						
Number	Paid, ple	edged	Return to tax offices							
of cases	case	ratio	In correct	ratio	Unrespon	ratio	Difficult to	ratio		
					sive		pay			
72,088	45,861	63.6	7,350	10.2	17,347	24.1	1,530	2.1		

(Note) The number of "paid, pledged" includes the partial payments, and pledged but the payment deadline has not yet arrived.

3) Notification performance from December 2018 to October 2019

There is 40,897 out of 45,462 persons targeted for notification were called by telephone from December 2018 to October 2019. As a result, the payment pledge rate was 73.2%, and the number of those who failed to make the payment pledge due to allegations of difficulties was 626, 1.5% of those notified. In addition, there were 9,533 cases that could not contact the delinquent, including 1,786 cases where telephone numbers were incorrect, 826 cases of tax amount errors, totaling 2,622 cases, and 7,737 cases were unresponsive.

(Notification result from 2018.12~2019.10)

(Unit:	case,%)
--------	---------

Number	Paid, pl	edged		Return to tax offices							
of cases	case	ratio	In correct	ratio	Unrespon	ratio	Difficult to	ratio			
					sive		pay				
40,897	29,912	73.2	2,622	6.4	7,737	18.9	626	1.5			

(Note) 1. The number of "paid, pledged" includes the number of partial payments, pledges made, but the payment deadline has not yet arrived.

2. The "Incorrect" column includes 1,786 phone number errors and 826 cases in which the unpaid or delinquent amounts were incorrect and the tax office was asked to correct them.

2. Evaluation on Notification performance, after implementing new operation policy (1) Payment pledge rate

Comparing notification results from the start of operation March 2016 to March 2017 and from April 2017 to November 2018, which revised the operation policy, and from December 2018 to September 2019, the total number of notifications in the first year was 22,577, but in the year and a half since April 2017, 72,088 notifications were issued, and it is increased about 3.2 times by the number of notifications in the first year. And the pledge rate has increased from 45.6% to 63.6%. The commitment rate for the last 10 months has been 73.2%.

(2) Return rate

Regarding cases returned to the tax office, the percentage of cases returned due to incorrect telephone numbers decreased from 18.7% to 10.2% and 6.4%, and the percentage of cases returned due to claims of difficult payment decreased from 9.6% to 2.1% to 1.5%.

(3) Analysis

The result is occurred due to the fact that the criterias for notification have been narrowed down to three conditions based on the new operation policy (being newly generated, three kind of tax delinquency, and total delinquency by tax item of less than 1 million Tg) and is considered to be the result of effective and wide-area notifications.

In addition, the call center exchanged information with the tax office closely, and ascertained early the return cases that could not be contacted due to incorrect telephone numbers, resulting in a lower return rate to the tax offices. After more than three years of notification work, it is considered that the improvement of notification skills of OP, such as how to explain to delinquents and how to persuade them to pay, helped to reduce the percentage of delinquents who reported difficulty in payment.

II Future tasks

1. Operation of automatic telephone notification system

The automatic telephone notification system has a function to extract notification target, an automatic call function, a screen for displaying detailed information related to delinquencies, a negotiation management function, statistics function and a data processing function. As a result, a large amount of work can be eliminated and expected that the number of notifications can be greatly increased if the eliminated amount of work is further invested in the notification. The status of system development, renovation is as follows.

(1) Notice type and system development status

Since the start of operation in March 2016, the OP has made a manual telephone call using the "TAXACT" (tax registration database) program based on the tax return data provided by the Risk Management Department, inputting and summarizing data manually, thus the amount of work that should be spent on the notification was spent on internal work such as inputting the results of the notice.

(2) GDT system repair status

The integration of the systems used independently by each department from January 2018 has been promoted, and the existing "TRIPS" (tax integrated management system) has been completely renovated. The "TAIS" (Tax Administration Information System) (Comprehensive Tax Information System) system has just begun operation (partially unrepaired)from March 2019 and this makes possible to easily obtain delinquent information that meets the criteria from "TAIS" and facilitates the selection of persons to be notified, but the specifications of the automatic notification system (has an automatic calling function, a function for extracting the persons to be notified, statistical function, a negotiation record management function, a data processing function, etc.) was not included.

For this reason, the Notification Center has been in direct contact with external companies since October 2019 to incorporate functions according to the specifications of the automatic telephone notification system, and has begun discussions on creating a system program.

(3) Operation period of automatic telephone notification system

As mentioned in (2) above, GDT is continuously making efforts to develop functions in accordance with the specifications of the automatic telephone notification system, but the timing of the operation of the system is unknown.

2. Person targeted for notification

From various viewpoints such as the processing capacity of the center, the timing and frequency of non-payment and delinquency, and contribution to the improvement of the storage rate, it is necessary to select the tax office, the person and the tax amount to be notified, and to find the optimal combination with the highest processing effect.

(note) Looking at the distribution of small delinquent taxpayers (see Attachment (Reference Material 2), "Delinquency status table by tax tier in 2018"), the number of cases where the amount of delinquent tax is 990,000 Tg or less accounts for 83.9% of all delinquent taxpayers, of which 42.6% is under the jurisdiction of the prefectural tax office and 57.3% by the capital (1 city, 9 wards) tax office. In the future, it is necessary

to consider whether to periodically make telephone calls to large-scale non-payers up to a certain amount of tax payments as a part of the notification center work.

3. Status of engaged work

Although the notification work is a simple task, it has a lot of stress due to having a conversation with many taxpayers (nonpayers) in one day and sometimes handling complaints. It is essential for OPs to ensure sufficient break time and appropriate refreshment time, and it is necessary to give sufficient care to health management such as rotating by day and week, and to foster a work environment that does not accumulate stress.

4. OP increase

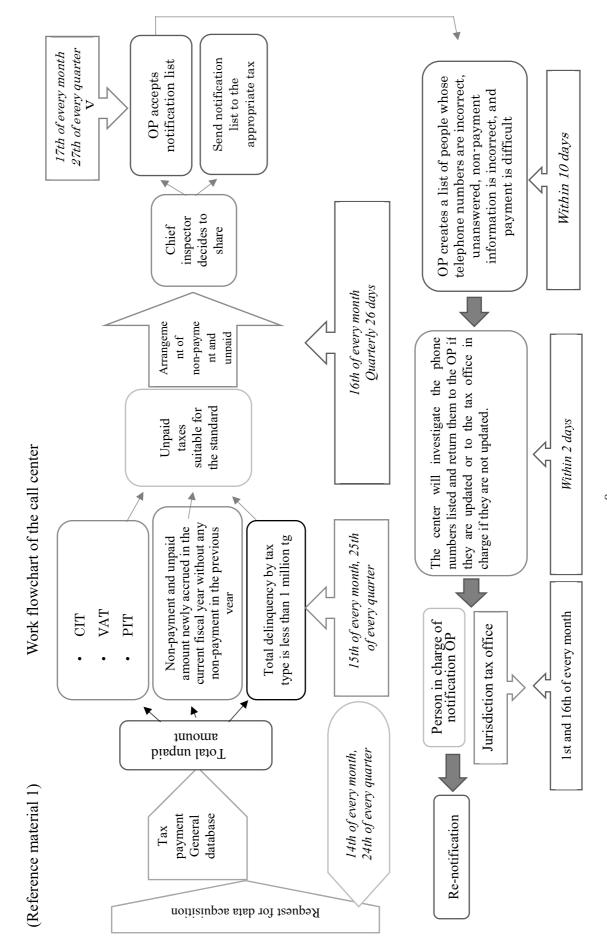
It is clear that the number of OPs is absolutely insufficient compared to those who are subject to notification. In order to expand the number of notification target tax offices nationwide, it is necessary to increase the number of OPs or adopting part-time jobs.

5. Handling the return case

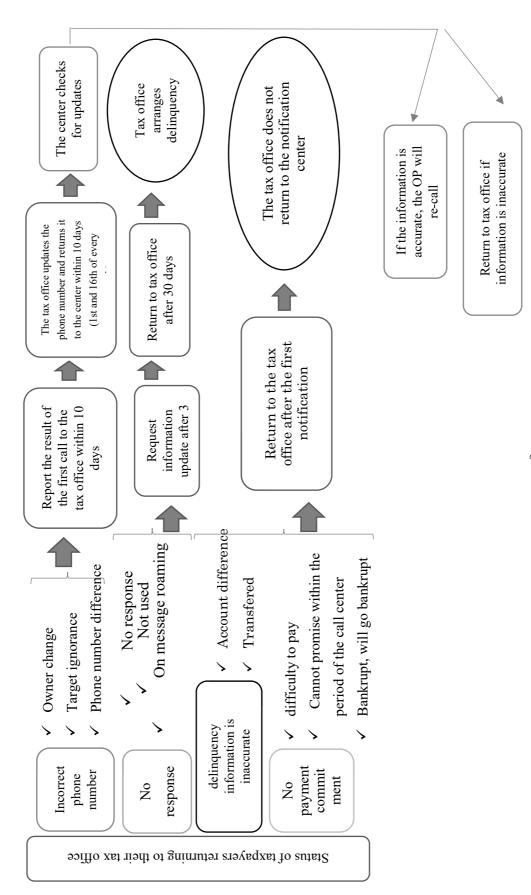
For cases in which the data of the person being notified is incorrect, the processing rules and processing deadlines with the jurisdiction tax office have been improved in the current operation policy. Since it will increase relatively, it is desirable to keep the catch ball of the return case only once so as not to overwhelm the notification work which is the original work.

6. Response to telephone receiving work

Currently, the telephone receiving work does not have a specific person in charge, and each OP is handling it, but it takes time and effort to answer, and the administrative work is reduced, it becomes a factor such as the notification work being interrupted. In the future, it will be necessary to consider measures such as setting up a dedicated person for receiving telephone or creating a rotation.



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(Reference 2)

< 2017, 2018 tax arrears by tax tier >

(Unit: case, million Tg,%)

								ŝ		
	J C	4	Capi	Capital city	,	CE I		Τ	Total	
	Pret	Pretecture	(lcity 9	(1city 9 districts)		LIU				
	case	amount	case	amount	case	amount	case	ratio	amount	ratio
	64,290	5,025	65,511	9,716	23	5	129,824	83.9	14,746	1.1
$1~\sim~990,000~{ m Tg}$	67,840	7,809	91,206	18,698	58	17	159,104	81.9	26,524	
	2,191	3,760	7,848	13,927	12	25	10,051	6.5	17,712	1.4
1 to 2.99 million Tg	2,824	5,818	12,895	27,144	29	66	15,748	8.1	33,028	
	1,353	7 423	6,214	34,492	24	15.8	7,591	4.9	42,074	2.9
3 to 9.99 million Tg	1,620	10,203	9,015	59,895	69	482	10,704	5.5	70,579	
	758	16,527	4,490	96,683	59	1,622	5,307	3.4	114,832	7.0
10 to 49,99 million Tg	813	21,240	5,409	145,026	111	3,523	6,333	3.3	168,789	
	132	8,917	793	55,482	44	3,256	696	0.6	67,655	3.9
50 to 99,99 million Tg	122	9,363	1,028	77,945	55	5,525	1,205	0.6	92,833	
	119	57,264	735	276,194	161	497,458	1,015	0.7	830,885	83.7
More than 100 million	133	83,039	929	1,136,408	150	795,532	1,212	0.6	2,014,978	
	68,843	98,915	85,591	486,464	323	502,525	154,757	100.0	1,087,904	100.0
Total	73,352	137,472	120,482	1,465,116	472	805,145	194,306	100.0	2,407,731	
[Comment]									(Source: GDT)	GDT)

The number (65,551) of capital cities (1 city and 9 districts) in 2018 with a delinquent tax amount of 990,000 Tg or less decreased by about 30% compared to that in 2017 (91,206), and also increased to 1 to 2.99 million Tg. The number of cases in the capital city (7,848) has decreased by almost 37% compared to that in 2017 (12,895).

Technical cooperation deliverables

Investigation report on tax office internal works

The project for the enhancing tax collection operation and international tax issue of Mongolian tax administration

> Tax Collection Expert Kosaka Mitsuru Tax Collection Expert Shigeo Kumakura 2019.11.30

INVESTIGATION REPORT ON TAX OFFICE INTERNAL WORK (NOVEMBER 2019)

I The progress

Regarding the efficiency of internal affairs at the tax office, the project goal is "The submitted operation manual will be tried in a pilot district in the city."

First of all, visited the tax offices of the pilot ward Chingeltei district and Songinokhairkhan tax offices, which were scheduled to be trialed, and investigated the current status of internal affairs processing (see "Current status of collection work at both tax offices"). The status was that "PCs used for processing internal works are aged, speed is slow and not sufficient for efficient work progress", and "The number of personal computers is not secured according to the number of staff" and as a prerequisite for efficiency, it is essential that maintenance of personal computers was urgently needed. Therefore, in September 2017, a total of 72 PCs were provided to the pilot district 2 tax offices, 40 computers and 32 computers, respectively and give advice on the efficiency of the project.

Since then, the general tax law amendment has become more likely to be enacted, so it is expected that internal works after the law will be significantly different from current ones. However, the work was temporarily shelved, and as an alternative, work on the "Guide to Clearing Delinquent Payments" and the "Collection of Forms" was conducted in accordance with the contents of the law revision.

In March 2019, the revised bill was approved by the Diet, and the collection work was dramatically changed due to newly introduced systems such as self-enforcement right and the secondary tax obligation system. "Delinquency arrangement manual" and related forms were prepared and submitted (see (Reference) in (2) "Future Directions") to GDT in August 2019 for implementation tax collection work smoothly within the new legal environment.

Then, it is planned resuming work on creating a collection work manual, such as the "Internal work Administrative Procedure", which manualized the internal administrative work and system operation procedures in the collection department. The work was interrupted because of the GDT Integrated database system is under maintenance and the tax collection administrate procedures are not solidified yet. (see Reference 2 "System modification to improve internal administrative efficiency").

(reference)

- 1. Current state of collection work of both district tax offices
 - 1. Current state of collection work
 - (1) Conventional organizational structure

There are no divisions by collection works in both tax offices, and each collection staff is responsible for around 500 taxpayers (corporate) and manages tax returns and payment status on a PC while managing delinquencies.

(2) Change in organizational structure

The tax offices of Chingeltei and Songinokhairkhan tax offices have been gradually improving work on the collection department since 2018 with the provision of PCs. The "segment method" introduced in 2019 and trials started in February of the and continued until May, with full-scale implementation has begun in June of the same year. Similarly, from September 2019, the delinquency arrangement, using the "segment method"¹ has been expanded to the other 6 district tax offices in Ulaanbaatar.

(3) Organizational structure and number of staffs

[Organizational structure]

Organizational structure of both tax offices are as follows:

- ≪1st division ≫ The conventional debt management division: works of managing and inputting basic information such as the taxpayer's address and telephone number, inputting and filing, payment, refund, appropriation, etc., as well as responsible for registration of tax revenue planning, which involves taxpayer, tax item, amount and accounting operations of the related administrative agencies and financial institutions.
- ≪2~4 division ≫ The conventional delinquency arrangement work (preparation and sending of payment notice, property investigation, collection procedure from bank account, salary, collateral collection procedures, postponement, seizure, and a series of delinquency arrangements, such as procedures for filing auctions with the court of execution, and duties related to the creation of reports and input of performance, etc. for delinquent and non-payment) divides into the following three work scales by segmentation.

• 2 unit: Delinquency arrangement for corporations and personnel taxpayers whose sales are up to 50 million Tg, (including cases returned from the notification center), cooperation with local government agencies,

¹ This guides taxpayers from four perspectives: taxpayer registration, filing, investigation, and payment guidance (consolidation of delinquent payments) from the viewpoint of taxpayer services and training of taxpayers. Specifically, taxpayers are classified into four segments: large, medium, small, and very small in terms of sales, and taxpayer management is tailored to each segment.

discovery of unfiled persons, registration, etc.

• 3 unit: Delinquency arrangement for corporations and personnel taxpayers whose sales are from 50 million to 1.5 billion Tg, (including cases returned from the notification center), cooperation with local government agencies, discovery of unfiled persons, registration, etc.

• 4 unit: Delinquency arrangement for corporations and personnel taxpayers whose sales are from 1.5 billion to 5billion Tg, discovery of unfiled persons, registration and sales and management of stamps, management of liquor companies,

 \ll 5 division \gg Responsible for work related to the court of judgment, opposition and litigation cases

 $\ll 6$ division \gg Responsible for creating tax plans, summarizing results, and reporting $\ll 7$ division \gg Responsible for delinquent cases of vehicle taxes, air pollution fees, road usage fees, and cooperation with related government agencies

 $\ll 8$ division \gg Work with the Taxpayer Services Department to identify undeclared taxpayers and register their tax. The Chingeltei Tax Office does not have staffing in divisions 6 and 8.

[Number of staff]

In this division, the number of collection staff has been reduced by almost half in both tax offices. At the Chingeltei Tax Office, the number has been reduced from 41 to 28, and at the Songinokhairkhan Tax Office it has been reduced from 34 to 17. In particular, number of staffs, who is in charge of delinquency arrangement are reduced at the 2 tax offices, 34 to 23, and 24 to 10, respectively. The decrease in the number of staff was due to the fact that the number of PCs was updated and efficiency of administrative work was improved due to restructuring, resulting in more efficient delinquency arrangement.

1) Problems of the Segmentation method

GDT has begun full-scale segmental delinquency settlement at the city tax offices in September 2019. However, there are some issues regarding the number of delinquent balances, the relationship between tax amounts and business scale, appropriate staffing, etc. In other words, it can be assumed that there is a proportional relationship between the business size and the amount of delinquent tax, but to derive a clear relationship is not possible.

Therefore, it will be difficult to match the number of cases, the number of staff members, the collection capacity, etc., and to determine the optimal arrangement.

In the future, it will be necessary to monitor the delinquency status by tax level for each segment at any time, and flexibly respond to promote more efficient delinquency arrangements while balancing the number of jurisdictions, the number

The project for the enhancing tax collection operation and international tax issue of Mongolian tax administration

of staff assigned, the collection capacity. For your information, the status of delinquencies by tax level in 2018 is as shown in the reference materials below.

2) Duties assignment structure

The following table shows the composition of the collection duties at each tax offices.

	Chingeltei	Songinokhairkhan		
Number of person in	28 persons	17 persons		
charge of tax	(41persons)	(34persons)		
collection				
Number of person in	3	2		
charge of debt				
management				
Number of person in	23 (34 persons)	10 (24 persons)		
charge of				
delinquency				
arrangement				
Ultra-small	7	3		
Small scale	13	4		
Medium scale	3	3		
Objection, litigation	1	1		
Tax revenue	-	1		
planning, reporting				
Person in charge of	1	1		
vehicle tax				
Others	-	Information investigation 2		
		persons		

(Note) 1. The person in charge of the information investigation is responsible for conducting the inspection and reporting, which requested from GDT and Capital city tax authority.

2. The number in parentheses indicates the number of staff in the previous year.

3) Number of valid transactions arranged and the collected amount

Tables 1 and 2 show the number of effective transactions arranged and the amount of tax collected accordingly in the tax offices in 2017 and 2018. Compared to the results in 2017 and 2018, the number of effective transactions arranged and the collected amount at the Chingeltei Tax Office have decreased, but the Songinokhairkhan Tax Office has far exceeded the previous year.

Detailed analysis on delinquent performance work of the 2 tax offices is necessary for the cause, but it was not possible to concentrate on delinquent payment work, due to organizational restructuring and full renovation of the comprehensive tax management system.

- 2. System modification to improve internal administrative efficiency
- (1) Establishment of a collection support system for the comprehensive renovation of the comprehensive tax management system

GDT, with the support of the Asian Development Bank (ADB), undertook a complete renovation of the integrated tax management system in January 2018, combining previously used "TAXACT", "TAXPAYMENT", "Debt management" systems, and collection support system that can manage the entire collection business has been operating since March 2019.

(2) System overview

This support system, which has been created in anticipation of the revision of the General Tax Law, consists of two programs: a transmission system, which automatically send an e-mail notification system ("Invoice" (corresponding to "Dunning Letter" which is a prerequisite for seizure) for non-payers) and a delinquent arrangement system (a system that performs a series of delinquent arrangement procedures such as preparation of a record and input of arrangement results after seizure).

As a result, most of the internal works of the delinquency arrangement will be mechanized, and it is expected that labor-saving and more efficient.

II Future direction

GDT has completed a full renovation of the comprehensive tax management system, and since the revised tax law was enacted this year, it is necessary to review the execution system and organizational structure of delinquent arrangement in preparation for the enforcement of the law from January 2020. We hope that the efficiency of the collection internal affairs will be further improved.

(Reference) Enactment of the revised tax law and work manual

1. Enactment of the revised tax law

The revised tax law was finally passed by the Diet at the end of March 2019, and preparations are underway for the enforcement of the law on January 1, 2020, including the creation of the Order of the Commissioner of the GDT.

2. Delinquency arrangement manual

By August 2019, in preparation for the enforcement of the revised tax law, besides the creation of the order of the Commissioner, project experts have prepared draft manual with related forms that outlines the specific procedures for the delinquency arrangement, including works such as property investigation methods, tax payment postponement, seizure, secondary obligation.

Attachment 1

esults by delinque	0		e) (unit: case, billion Tg			
	Carried over delinquency		Delinquency of the fiscal year		Total	
	2017	2018	2017	2018	2017	2018
Delinquency amount	539.2	823.3	1,569.5	177.0	2,108.7	1,000.3
Number of delinquents	4,993	5,053	4,636	5,355	9,629	10,408
	I	Delinquen	cy arrang	ement	·	
Notice sent						
case	1,276	1,436	735	803	2,011	2,239
amount	335.7	440.4	195.7	188.7	531.4	629.1
A Stopped bank tr	ansaction a	account		II		
case	527	360	196	138	723	498
amount	191.7	191.9	84.2	47.0	275.9	238.9
B Collection from	property					
case	2	0	0	0	2	0
amount	0.7	0	0	0	0.7	0
C Collateral agree	ement					
case	9	1	8	0	17	1
amount	5.3	0.5	2.0	0	7.3	0.5
D Sale by action						
case	0	0	0	0	0	0
amount	0	0	0	0	0	0
E Seizure						
case	3	0	1	0	4	0
amount	1.1	0	0.1	0	1.2	0
F Lawsuits						
case	21	42	2	0	23	42
amount	21.2	27.0	1.2	0.1	22.4	27.1
Effective	562	403	207	183	769	586
processing	220.0	010 4	07.5	17.0	207.5	0.000
number (A+B+C+D+E+	220.0	219.4	87.5	47.0	307.5	266.4
F) and collected						
amount						

Results by delinquency arrangements (Chingeltei tax office) (unit: case, billion Tg)

[Comment]

The number of effective transactions and the amount collected for delinquencies were 562 cases in 2017 and 22 billion Tg, compared to 404 cases in 2018 and 240 million Tg in 2018, although the number of effective transactions decreased, but the amount collected was almost the same. In addition, the declaration year has decreased from 207 cases and 8.75 billion Tg in 2017 to 183 cases and 4.7 billion Tg in 2018.

1) Among the delinquencies carried forward, the number of lawsuits in 2018 and the amount of tax collected have both increased significantly.

2) Public auctions were not implemented in both 2017 and 2018.

(Attachment 2)

Results by delinquency arrangements (Songinokhairkhan tax office)

(unit: case, billion Tg)

	Carrie	dover	Delinque	ncy of the	To	tal
	deling		fiscal	vear	10	tui
	2017	2018	20.17	2018	20.17	2018
Delinquency	362.8	454.6	945.8	1,010.4	1,308.6	1,465
amount				-		-
Number of	12,501	14,746	17,278	54,663	29,779	69,409
delinquents						
Delinquency arrangement						
Notice sent						
Case	1,879	3,415	715	289	2,594	3,704
Amount	210.5	455.9	66.0	46.3	276.5	502.2
A Stopped ban	k account				1	
Case	580	1,882	95	0	675	1,882
Amount	106.5	357.2	5.7	0	112.2	357.2
B Collecting fr	om proper	ty				
Case	0	0	0	0	0	0
Amount	0	0	0	0	0	0
C Collateral agreement						
Case	0	0	0	0	0	0
Amount	0	0	0	0	0	0
D Auction						
Case	0	0	0	0	0	0
Amount	0	0	0	0	0	0
E Seizure						
Case	0	9	0	0	0	9
Amount	0	10.5	0	0	0	10.5
F Lawsuits						
Case	2	32	0	0	2	32
Amount	20.8	47.2	0	0	20.8	47.2
Effective	582	1923	95	0	677	1,923
processing	107.2	414.0			122.0	414.0
number	127.3	414.9	5.7	0	133.0	414.9
(A+B+C+D+ E+F)collecte						
d amount						

Comment

 The number of effective transactions and collection amount for delinquency carried forwards increased significantly from 582 cases and 12.73 billion Tg in 2017 to 1,923 cases and 41.49 billion Tg in 2018. In 2018, there were 9 seizures and a revenue of 1.50 billion Tg. On the other hand, there was no effective processing for the declaration year.

2) As a whole, both the number of effective transactions and the amount collected have increased significantly from 677 cases and 13.3 billion Tg in 2017 to 1,923 cases and 4.49 billion Tg in 2018.

3) Collection from assets, collateral agreements, and public auctions were not implemented in 2017 and 2018.

4) The number of delinquents for the year of filing is increasing significantly.

Mongolian tax administration The project for the enhancing tax collection operation and international tax issue of

(Reference)

The number (65,551) of capital cities (1 city and 9 districts) in 2018 with a delinquent tax amount of 990,000 Tg or less decreased by about 30% compared to that in 2017 (91,206), and also increased to 1 to 2.99 million Tg. The number of cases in the capital city (7,848) has decreased by almost 37% compared to that in 2017 (12,895). 2.9 3.9 1.4 83.7 100.01.1 7.0 ratio (Unit: case, million Tg,%) (Source: GDT) 67,655 14,746 17,712 114,832 92,833 26,524 33,028 42,074 70,579 1,087,9042,407,731 168,789 830,885 2,014,978 amount Total 0.6 83.9 81.9 6.5 0.6 0.64.9 5.5 3.4 3.3 0.7 100.0100.08.1 ratio 129,824 159,104 1,015 15,748 10,704 5,3076,333 969 1,205 1,212 154,757 194,306 10,051 7,591 case 805,145 25 66 15.8 Ś 17 482 3,523 3,256 5,525502,525 1,622 497,458 795,532 amount < 2017, 2018 tax arrears by tax tier > LTO 12 29 323 472 23 58 24 69 59 111 4 55 150 161 case 27,144 77,945 486,464 9,716 18,698 13,927 59,895 55,482 34,492 96,683 145,026 1,465,116 1,136,408 276,194 amount (1 city 9 districts) Capital city 120,482 91,206 7,848 12,895 9,015 1,028 735 929 85,591 6,214 4,490 5,409793 65,511 case 98,915 137,47 7,809 5,818 10,203 21,240 8,917 57,264 83,039 2 5,0253,7607 423 9,363 amount 16,527 Prefecture 68,843 67,840 1,620758 813 119 2.824 1,353 132 122 133 73,352 64,290 2,191 case 10 to 49,99 million Tg 50 to 99,99 million Tg More than 100 million 990,000 Tg 1 to 2.99 million Tg 3 to 9.99 million Tg Total Comment 2

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Technical cooperation deliverables

Manual on Delinquent Tax Collection



GENERAL DEPARTMENT OF TAXATION

MANUAL ON DELINQUENT TAX COLLECTION

ULAANBAATAR, 2020

RELATED TAX LAWS AND REGULATION

1.	General taxation law4
2.	Economic entity income tax law71
3.	Personal income tax
4.	Regulation on seizure, confiscation, storage protection of the assets of a
	taxpayer with tax arrears113
5.	Regulation on auction and monetizing by direct contract120
6.	Regulation on grace period for paying taxes (draft)126
7.	Regulation on the procedure for collection of delinquent tax from
	secondary person with obligation paying taxes (draft)131

March 22, 2019

Ulaanbaatar

GENERAL TAXATION LAW

(Revised)

PART ONE GENERAL CHAPTER

CHAPTER ONE GENERAL PROVISIONS

Article 1 Purpose of the Law

1.1. The purpose of this Law is to establish the legal grounds for the creation and setting of taxes in Mongolia, registering taxpayers, tax assessment, reporting, payment, auditing, collection, providing tax credits and exemptions, and withholding and refund of taxes; to define the rights, duties and responsibilities of the Tax administration of Mongolia (hereinafter referred to as 'the Tax administration'), the taxpayers and other persons having the obligations to the Tax administration under this Law, and to regulate relations arising between them.

Article 2 Tax legislation

- 2.1. The tax legislation shall comprise of the Constitution of Mongolia¹, this Law and other related legislative acts issued in conformity with these.
- 2.2. If an International treaty to which Mongolia is a party stipulates otherwise than the tax legislation of Mongolia, the provisions of international treaties shall prevail.

Article 3 Scope of applicability of the Law

- 3.1. This Law shall apply to the taxpayers, the Tax administration and those who are obligated to comply with the tax legislation under the law.
- 3.2. In the case, where a matter is not regulated by this Law, or other tax-related Laws have stipulations different from those in this Law on the matter, the Articles, provisions and paragraphs of the Tax Law that specifically regulates the matter in detail shall prevail.
- 3.3 In the event that the Law, the Articles, provisions and paragraphs that regulate in detail the matter referred to in Article 3.2 of this Law cannot be determined, the Law, the articles, provisions and paragraphs of the latest approved Law shall be adhered to.

Article 4 Introduction, change, granting credits, exemptions and annulment of taxes

4.1 The Parliament of Mongolia shall have the sole right to introduce, change, give tax credits and exemptions as well as annul taxes, except for the cases stipulated below:

¹ Constitution of Mongolia published in 1st Edition of "State Information"1992.

- 4.1.1 Stabilization of the tax rates and amounts to be paid by the legal entity implementing an investment project in accordance with the Investment Law²;
- 4.1.2 A special tax regime to be adhered to in free zones shall be established in accordance with the Law on Free Zones³, and the relations arising from its implementation shall be regulated by the relevant Tax Law.
- 4.2 The draft law related to tax credits, exemptions, changes in tax rates and amounts and reduction of the tax base shall be developed in conjunction with the draft law on Annual Budget of the particular year.

Article 5 Principles to be adhered to in taxation

- 5.1. The following principles shall be adhered to in creating, setting, and imposing, and payment of taxes, tax audits, tax collection, credits and exemptions:
 - 5.1.1. to be mandatory;
 - 5.1.2. to be clear;
 - 5.1.3. to be fair
 - 5.1.4. to be efficient.

Article 6 Definitions of legal terms

- 6.1. The following terms used in this Law shall have the following meanings:
 - 6.1.1. ""Transaction profit split method" means determining the conditions and value of the controlled transaction through economically valid splitting of the profit of the controlled transaction between related parties involved in the transaction and comparing it to the profit level of comparable independent transaction;
 - 6.1.2 "Transactional net margin method" determining the conditions and value of the controlled transaction by comparing its net profit margin with the net profit margin of the comparable independent transaction
 - 6.1.3 "Business day" means the days except for Saturday, Sunday or public holidays;
 - 6.1.4 "Enforcement measures" means activities such as court proceedings, execution of the court decision, pledge right, creation of a bankruptcy case related to the taxpayer and collection of tax debts;
 - 6.1.5 "Tax" means irrevocable monetary contribution to the budget imposed on the income or property of the individuals or entities, on goods, works and services at a specified rate and amount for specific period of time;
 - 6.1.6 "Principles of determining the arm's length price" means determining the arm's length price of transaction and making adjustments to tax assessment where the tax base is reduced due to the difference between the terms of the transaction between the related parties and the terms of the transaction between nonrelated parties that is comparable for tax purposes;
 - 6.1.7. "Transfer pricing adjustment method" means determining the terms and price of transaction of goods, works and services performed between related parties under arms-length principles;

² Investment Law; "State Information" Edition No. 41, 2013.

³ Law on Free Economic Zone; "State Information" Edition No. 09, 2015.

- 6.1.8 "Group" means the related entities in terms of ownership and management that produce consolidated financial statements for financial reporting purposes, or when shares of one of the entities are openly traded at the stock exchange;
- 6.1.9 "Resale price method" means determining the terms and price of the controlled transaction by comparing its gross profit margin with the gross profit margin of an independent transaction that is comparable in terms of sales revenue;
- 6.1.10 "Transaction for internal comparison" is a transaction of the taxpayer with related parties and with independent parties;
- 6.1.11 "Benchmark pricing method" means assessment of the tax based on armslength estimation of the business activities, income, expenses or other variables of an entity that is running similar activities as the taxpayer in terms of capacity and conditions, and in the absence of such taxpayer, assessment of the tax by the tax administration based on of the information available to it;
- 6.1.12 "Authorized representative" means an accredited person with a right and obligation to represent the taxpayer based on an authorization or a contract and to interact with the Tax administration;
- 6.1.13 "Re-assessment of tax" means a tax amount determined by the Tax administration based on the results of tax audit conducted as stipulated in this Law;
- 6.1.14 "Re-assessment report" means a document to be delivered to a taxpayer which reflects the amount of re-assessed taxes, penalties and due losses as assessed by the Tax administration;
- 6.1.15 "Report validating value-added tax assessment and its payment" means a document on tax withholder's value-added tax assessment and its payment reviewed and validated by the Tax administration according to the Value-added Tax Law⁴;
- 6.1.16 "Certificate of residence" means document certifying that a taxpayer is a resident taxpayer in the tax year issued by the Tax administration according to an established template.
- 6.1.17 "Cost plus method" means determining the terms and price of controlled transaction by comparing its gross profit margin to the gross profit margin of a comparable independent transaction;
- 6.1.18 "Tax scheme" means a tax avoidance activities undertaken for the main purpose of gaining tax benefits;
- 6.1.19 "Tax withholder" means a person obligated to withhold taxes payable by a taxpayer under the relevant tax Law, and pay withheld tax to the budget and report it;
- 6.1.20 "Taxpayer" means a person obligated to pay tax in accordance with the tax legislation or a withholder;

⁴ Law on Value Added Tax; Edition No. 29, 2015

- 6.1.21 "Taxpayer's certificate" shall refer to electronic or paper documents with a secure code issued from the integrated database of tax administration a taxpayer with the taxpayer's identification number and containing tax information;
- 6.1.22 "Taxpayer's identification number" means a unique identification number of the taxpayer in the integrated tax registration system provided to a taxpayer by the Tax administration;
- 6.1.23. "Tax evasion" means the action or inaction of a taxpayer violating the tax legislation with the purpose of not paying taxes or reducing or concealing the amount of taxes payable;
- 6.1.24 "Tax avoidance" means the actions of a taxpayer leading to conditions stated in Article 16 of this law with the main purpose of under-assessing the tax, reducing the tax base, or increasing the loss;
- 6.1.25 "Tax administration" shall refer to the state administrative body, aimag and districts' tax departments, divisions and soums tax units, the state tax inspectors and tax collectors with duties to ensure and oversee tax compliance;
- 6.1.26 "Tax report" shall refer to re-assessment report, report validating assessment and payment of value added tax and tax refund report prepared by the state tax inspector;
- 6.1.27 "Tax refund report" shall refer to a document created for refund of taxes collected by the Tax administration in excess for no reason and payment of due losses;
- 6.1.28" Tax year" means a calendar year;
- 6.1.29 "Tax return" means the written or electronic reporting sheet issued according to the templates approved by the Tax administration and to be submitted by the taxpayer that determines the tax base, taxes, payments and charges assessed;
- 6.1.30 "State tax inspector" means an authorized administrative public servant employed by the Tax administration with duties to ensure tax compliance, provide services to taxpayers, collect taxes, receiving tax returns, and conducting tax audit in accordance with this Law;
- 6.1.31 "Tax debt collection costs" means expenses related to operations on recovery of tax debts, including sealing and seizure of properties and assets, request for subtraction, storage and/or transportation of a seized assets or property, auctioning, and confiscation and allocation of the securities and intangible assets rights;
- 6.1.32 "Simplified tax regime" means a comprehensive set of specific activities on tax registration, assessment, tax rates, reporting and payment;
- 6.1.33 "Tax base" means monetary value of income, property and assets, goods, works, services, specific rights, land, subsoil, natural resources, mineral reserves; air, soil and water pollution determining the specific amount or percentage of taxes payable.

- 6.1.34 "Electronic tax documents" shall refer to a set of tax documents prepared, stored, sent or received in electronic form, that are verified by secure electronic signature as per provided in the tax legislation;
- 6.1.35 "Tax action without distinct business purpose" refers to the taxpayer's action of engaging in, planning and execution of transactions leading to reduction of the taxes payable or tax avoidance or postponement of tax payments;
- 6.1.36 "Payment" means the monetary remittance from any person for using the state-owned land, subsoil, natural resources, forests, plants, mineral springs, minerals, petroleum deposits, for polluting air and contaminating water, soil, and hunting animals, and that are channeled to the state budget;
- 6.1.37 "Comparability analysis" means the analytical method of comparing the terms and conditions of transactions between the related parties to the terms and conditions of transactions between the independent parties, and making accurate adjustments to remove the impacts of different factors and discrepancies between them;
- 6.1.38 "Comparable uncontrolled price method" means determining the price and the factors affecting the price of the controlled transaction by comparing them with similar, comparable independent transaction price and the factors affecting such price;
- 6.1.39 "Collector" refers to a Tax administration officer who performs duties of a state tax inspector other than tax re-assessments and tax audit;
- 6.1.40 "Charges" refers the monetary fees charged public bodies for each service provided to a person and paid to the budget;
- 6.1.41 "Reasonable excuse' means the following:
 - 6.1.41.a. Undergoing a medical treatment in a hospital as per evaluation of a doctor or health institution that is evidenced by the patient's card, the laboratory analysis and analysis by the medical devices;
 - 6.1.41.b. Caring for a patient who is receiving medical treatment in a hospital in accordance with the Article 6.1.41a of this Law;
 - 6.1.41.c. Being on public mobilization announced by the authorized person as per provided in the Law;
 - 6.1.41.d. Being held in a quarantine area due to a countrywide life-threatening contagious disease announced by the authorized person specified in the Law;
 - 6.1.41.e. Causes including a fire and/or sudden natural disaster or force majeure (flood, drought, dzud/severe weather conditions, dangerous snow or dust storm, earthquake, etc.) that prove the official announcement by the authorized person as per provided in the Law;
- 6.1.42 "Controlled transaction" means a transaction between the related parties;
- 6.1.43 "Independent transaction" means a transaction between unrelated parties;
- 6.1.44 "Electronic signature" means what is referred to in Articles 4.1.1 and 4.1.2 of

the Law on Electronic signature⁵;

- 6.1.45 "Gaining economic benefits" means increasing profits or profitability by raising operational efficiency, cost saving, reducing the operating costs and timing of the recipient;
- 6.1.48 "Exerted resistance" means intentional action or inaction that exerted violent resistance to or pressure on the state tax inspectors or collectors in relation to performing their official duty;
- 6.1.49 "Person" means an individual, legal entity, organization with no rights of an entity and any other party of a similar nature participating in civil relations;
- 6.1.50 "Ultimate owner" means a person that owns 30 percent or more of shares, equity participation, or voting rights of the holder of a license and special permit of mineral resources, oil, radioactive minerals, or holders of land titles for possession and use, or has a right to receive the dividends directly or through a representing legal entity of one or more continuous structure, exercises the voting rights through representation, or has a right to receive the dividends.

CHAPTER TWO TAXES OF MONGOLIA

Article 7 Taxes of Mongolia

- 7.1. Taxes of Mongolia shall comprise of taxes, charges and fees (hereinafter referred to as taxes)
- 7.2. The taxes of Mongolia shall have the following types:
 - 7.2.1. Corporate income tax;
 - 7.2.2. Customs duties;
 - 7.2.3. Value added tax;
 - 7.2.4. Excise tax;
 - 7.2.5. Gasoline and diesel fuel tax;
 - 7.2.6. Royalty;
 - 7.2.7. Exploration and mining license fees;
 - 7.2.8. Air pollution payment;
 - 7.2.9. State stamp duty;
 - 7.2.10. Water pollution payment;
 - 7.2.11. Petroleum Royalty;
 - 7.2.12. Petroleum and unconventional petroleum exploration and exploitation license fee;
 - 7.2.13. Personal income tax;
 - 7.2.14. Immovable property tax;
 - 7.2.15. Livestock tax;
 - 7.2.16. Automobile and vehicle tax;

⁵ Law on Electronic Signature; "State Information", Edition No.01, 2012

- 7.2.17. License fee for exploitation of natural resources other than minerals;
- 7.2.18. Land payment;
- 7.2.19. Gun tax;
- 7.2.20. Capital City tax;
- 7.2.21. Dog tax;
- 7.2.22. inheritance and gift tax;
- 7.2.23. waste disposal service fee;
- 7.2.24. fees for the use of natural plants;
- 7.2.25. fees for use of water resources;
- 7.2.26. fees for use of spring water;
- 7.2.27. fees for use of forest reserves;
- 7.2.28. fees for use of wildlife;
- 7.2.29. fees for use of widespread mineral resources.
- 7.3. Relations pertaining to specific tax type shall be regulated by this law and the particular tax law.

Article 8. Setting tax rates and amounts

- 8.1. Tax rates and amounts shall be set by the Parliament and by the Cabinet, and Citizens' Representatives Assembly of aimags, capital city, soum and district as authorized by the Parliament according to the legislation.
- 8.2. The tax rates set forth in Articles 7.2.2, 7.2.3, 7.2.4, 7.2.6, 7.2.8, 7.2.10, 7.2.11, 7.2.18, 7.2.25 and 7.2.27 of this Law may be established by the Cabinet where it is specifically authorized by the Parliament in the law regulating such taxes within the limits set out in the law.
- 8.3. The tax rates specified in Articles 7.2.13, 7.2.14, 7.2.15, 7.2.16, 7.2.17, 7.2.20, 7.2.21, 7.2.24, 7.2.26, 7.2.28 and 7.2.29 of this Law may be established by the Citizen's Representative Assembly of aimag or the Capital City where these are specifically authorized by the Parliament in the law regulating such taxes within the limits set out in the law.
- 8.4. The tax rates specified in Article 7.2.23 of this Law may be established by the Citizens' Representatives Assembly of soums and districts where these are specifically authorized by the Parliament in the law regulating such taxes within the limits set out in the law.
- 8.5. The tax rate and amount specified in Article 6.2 of the Law on State Stamp Duties⁶ shall be established by the Cabinet and the tax rate and amount specified in Article 6.3 shall be established by the Aimag and Capital City Citizens' Representatives Assembly respectively.

Article 9 Taxable items

9.1. Taxable items shall be the income, assets, property, goods, works, services, certain rights, land, subsoil, natural resources, mineral resources and reserves, as well as

⁶ Law on State Stamp Duty "State Information", Edition No.01, 2011

pollution of air, and contamination of soil and water

9.2. Taxable items shall be specifically defined by the relevant laws on the types of taxes.

Article 10 Tax credit and exemption

- 10.1. The tax credits and exemptions shall be in the following forms:
 - 10.1.1. Reduction of taxes imposed;
 - 10.1.2. Reduction of tax rates;
 - 10.1.3. Exemption of income, assets, property, goods, works and services that are below the established minimum level from taxes;
 - 10.1.4. Exemption of a taxpayer from taxes;
 - 10.1.5. Exemption of certain portion of a taxable item from taxes;
 - 10.1.6. Other credits or exemptions as specified in the tax legislation.

Article 11 Simplified tax regime

- 11.1. The Tax administration and taxpayers may use a simplified tax regime.
- 11.2 The taxpayers that wish to use the simplified tax regime shall be connected to the integrated tax registration and information database.
- 11.3. Unless otherwise stated in the law the simplified tax regime shall be applied for the entire tax year only, and it is prohibited to move out of the regime in the middle of a tax year.
- 11.4. Procedures for implementing a simplified tax regime shall be set out in detail by a Law on a specific tax type.

CHAPTER THREE TAXPAYERS

Article 12 The rights of taxpayers

- 12.1. Taxpayers shall have the following rights:
 - 12.1.1. To obtain information, guidance and direction related to tax compliance, exercising their rights and performing their duties as taxpayers; and the procedures, methodologies and forms for tax assessment, payment and filing of tax returns, from the Tax administration and the state tax inspectors;
 - 12.1.2. To benefit from the tax credits and exemptions specified in the tax legislation;
 - 12.1.3. To be granted an extension of the tax payment due dates in accordance with the legislation;
 - 12.1.4. To be refunded or offset the overpaid taxes, and to claim and be paid the due losses;
 - 12.1.5. To protect their rights and legitimate interests personally and/or through their authorized representative or tax practitioners; to be represented and be present during the tax audit in person;
 - 12.1.6. To review the tax re-assessment reports and other documents issued by the Tax administration, and where these are considered groundless or

inconsistent with the law, file a complaint according to the administrative and/or the judicial procedures within thirty (30) days after receiving such documents;

- 12.1.7. To obtain or provide an explanation on tax assessments, payments, and the conclusions of the tax audit;
- 12.1.8. To require the Tax administration and state tax inspectors to comply with the tax legislation, and to be compensated for any losses or damages incurred due to unlawful decisions and/or actions of the Tax administration in accordance with the procedures set out in the law.
- 12.1.9. To file complaints related to unlawful activities and decisions of the Tax administration and state tax inspectors to their direct supervisors or higher-level officials or to the court. Filing of a complaint shall not constitute grounds for ceasing or suspending the payment of taxes, fines or penalties or due losses imposed;
- 12.1.10. To get assistance and/or advice from the authorized accountants and the tax practitioners as allowed by the law on exercising their rights and performing the duties and obligations prescribed by the tax legislation;
- 12.1.11. Not to pay taxes at the rates higher than the stabilized rates specified in the stability certificate during its validity term if the stability certificate was issued according to the investment legislation.
- 12.1.12. Other rights provided for by the legislation.
- 12.2 In order to implement the provisions of Article 12.1.1 of this Law, the Tax administration shall not disclose to the taxpayer the detailed risk indicators to be covered by the tax audit.

Article 13 Guarantee of confidentiality

- 13.1. The Tax administration shall not disclose the taxpayer's information by giving it to others or using it for the personal purposes on grounds other than those stipulated in this Law.
- 13.2. The Tax administration, state tax inspectors, other current and former employees of the Tax administration and those who have been involved in general compliance activities of the Tax administration as witnesses shall be obligated to maintain the confidentiality of the taxpayer's information that they become aware of during performance of their official duties. Such information may be disclosed to the following officials according to a decision of the Commissioner of a Tax administration:
 - 13.2.1. The state tax inspectors performing their official duties in accordance with the tax legislation;
 - 13.2.2. The case registrars, investigators, prosecutors and judges who are obligated to register, inspect and resolve infringements and crimes violating the tax legislation, in connection with matters related to that infringement or crime only;
 - 13.2.3. Authorized person appointed or selected for the purpose of exchanging information in accordance with the international treaties in connection with

exchange of information related to such treaties.

- 13.3. The provision 13.1 of this Law shall not apply to the taxpayers' names, identification numbers and taxes paid to be publicly announced as permitted by the taxpayer or as required by the law and bid selection, as well as integrated reports and data consolidated at the Tax administration for statistical purposes.
- 13.4. The Tax administration, without permission of a taxpayer may publicly inform about a taxpayer who has violated the tax legislation or failed to rectify the violation within the timeframe as specified in the Law, or who has repeated the same infringement for three (3) or more times or who is being sought under investigation.
- 13.5 The state tax inspector with the right to access the database of the integrated tax registration and information database shall be appointed by the decision of the head of the state administrative body in charge of tax affairs, and their access to database and data use shall be track recorded.

Article 14 Termination of a tax payment obligation or assignment thereof to others

- 14.1. A tax payment obligation shall be terminated in the following instances:
 - 14.1.1. The tax debt of the particular type has been fully paid;
 - 14.1.2. The tax debts of the particular type of tax are offset from other taxes overpaid;
 - 14.1.3. The taxpayer is exempt from tax of the particular type in accordance with the Law;
 - 14.1.4. The Law on the particular tax type is abolished, and the tax debts of the particular type have been fully paid;
 - 14.1.5. A court has established that a taxpayer who has died or is presumed to be dead has no heir or no asset for inheritance.
- 14.2. In the case, where a legal entity is to be liquidated, a liquidation commission, or in the case, where bankruptcy of a legal entity, a trustee shall collect unpaid taxes from the assets of the legal entity in accordance with the procedures set out in the law and pay to the budget.
- 14.3. In the case, where a legal entity has been restructured through merger, consolidation or change, the rights and obligations associated with the tax assessment and payment shall be assigned to the legal entity that is formed as a result of the restructuring.
- 14.4. In the case, where a legal entity has been restructured by separation or demerger, the tax payment obligation shall be assigned to the new restructured entities proportionately to the taxable items and value of allocated assets or property.
- 14.5. In the case, where a legal entity to be liquidated is considered as risky according to this Law, it shall undergo the tax audit.
- 14.6. Tax payment obligations and rights of a private individual who has died or is presumed to be dead shall be assigned to any heirs in proportion to the inherited asset or property. Tax penalties or fines shall not apply in this case.

Article 15 Statute of limitations for taxes

15.1. The statute of limitations for the tax re-assessment, imposition of penalties, fines and due losses, tax credits or exemptions, loss carry-forward, value added tax assessment and ensuring payment shall be four (4) years; and the statute of limitations prescribed

in the Civil Code⁷ shall not apply to tax legislation.

- 15.2. The statute of limitations referred to in Article 15.1 of this Law shall not apply to the relations pertaining to payment of taxes, penalties and due losses, and the procedures on tax debt collection referred to in the Article 12 of this Law, and tax refunds as requested by taxpayers.
- 15.3. The statute of limitations referred to in Article 16.1 of this Law shall be counted as follows:

15.3.1 For the tax types the tax payment of which is made and the tax return is filed once at the end of the reporting year as stated in the Law, the statute of limitations shall commence from the business day following the due date for full payment of tax and filing of the tax return.

15.3.2 For the tax types the tax payment of which is made and the tax return is filed on a monthly or a quarterly basis as stated in the Law, the statute of limitations shall commence from the business day following the due date for full payment of the tax and filing of the tax return.

15.3.3 For the tax type the payment of which is made within certain period of time after the sale has taken place as stated in the Law and for the withholding tax, the statute of limitations shall commence from the business day following the due date for filing of the tax return and full payment of the tax.

15.3.4 For the tax types the payment of which is made without filing a tax return, the statute of limitations shall commence from the business day following the due date for tax payment as stated in the Law on particular tax.

- 15.4. If the taxpayer filed a complaint to the dispute resolution council, the statute of limitations shall be disrupted until a resolution is issued, or until a final decision if the taxpayer filed a complaint or the case is under an investigation of a law enforcement agency.
- 15.5. The statute of limitations shall be considered disrupted from the date the Tax administration filed a request for information from the foreign country Tax administration for the purpose of transfer pricing adjustment until the date the request was answered.

CHAPTER FOUR INTERNATIONAL TAX COOPERATIONS AND GENERAL ANTI-AVOIDANCE RULES

Article 16 General anti-avoidance rules

- 16.1. The Tax administration shall have the right to implement general anti-avoidance rules in occurrence of following events during an audit, but tax cannot be reassessed by implementing measures specified in the law under the law:
 - 16.1.1. A taxpayer has organized a tax scheme on his/her/its own or together with other person/s or an entity;

⁷ Civil Code; "State Information", Edition No.07, 2002

- 16.1.2. The taxpayer has gained tax benefit through tax avoidance within the scope of the scheme referred to in Article 15.1.1 of this Law.
- 16.2. Where the taxpayer has gained tax benefits through avoidance of tax in the form specified in Article 16.1 of this Law, the Tax administration shall reassess the tax under a condition where the taxpayer did not use such tax scheme or gained tax benefits and make adjustments to the tax assessment accordingly.
- 16.3 Where the taxpayer has undertaken the actions specified in Articles 16.1.1 and 16.1.2 of this Law together with other person/s, the taxes of such person/s shall be reassessed and adjusted under the same conditions.
- 16.4. Where the tax administration has made tax adjustments under this Law, the relevant taxes shall be reassessed.
- 16.5. The tax re-assessment shall commence within the statute of limitations stated in Article 14.1 of this Law, and the re-assessment shall cover preceding four (4) years from the assessment of tax as stipulated in Articles 16.3 and 16.4 of this Law.
- 16.6. A taxpayer shall be considered as having gained tax benefits where the taxpayer has reached the following outcomes using the *tax* scheme stipulated in Article 16.1.2 of this Law:
 - 16.6.1. Reducing the tax base or changing the tax exempted income, tax credits, tax withholding, and deductible expenses from the taxable income through an accounting method;
 - 16.6.2. deferring the tax payment obligation;
 - 16.6.3. gaining an advantage by deferring tax payment obligation;
 - 16.6.4. reducing the taxable income by increasing the amount of tax exempted income or nontaxable income;
 - 16.6.5 failing to impose tax on the taxable income.
- 16.7 The Risk Management Committee shall make a decision on whether to apply the general anti-avoidance rule and the Cabinet member in charge of finance and budget issues shall approve the implementation procedures.

Explanation: "General Anti-Avoidance Rule" refers to the rule used in tax administration at an international level.

Article 17 Mutually agreed procedures

- 17.1. The mutual agreement procedures of the Treaties of Mongolia signed with other countries on prevention from double taxation of income and assets, and tax avoidance shall be implemented within the framework of the Treaties.
- 17.2. Unless otherwise stipulated in the law, the taxpayers of foreign countries that have not concluded the international treaties with Mongolia on mutually agreed procedures shall not be subject to Article 17.1 of this Law.
- 17.3. The Member of the Cabinet in charge of finance and budget affairs shall approve the mutually agreed procedures in conformity with the requirements of the international treaties between Mongolia and other countries, and the international organizations that Mongolia is a member of.

Article 18 Procedures on exchange of information with the authorities of foreign countries

- 18.1. The following terms used in this Article shall have the following meanings:
 - 18.1.1 "Automatic exchange of information" means the exchange of information related to the resident of foreign country and that has been discussed and agreed upon between the parties to the agreement referred to in Article 18.1.5 of this Law without any prior request and on a regular basis with the fixed frequency.
 - 18.1.2 "Information" means the facts, reports, documents, records and accounts information containing either one or all of the following for the purpose of implementing the agreement referred to in Article 18.1.5 of this Law:
 - 18.1.2.a. documents, reports, records and accounts information held by the bank, financial institution, the person or an entity designated by them, a trustee of the assets, the broker and the guarantor;
 - 18.1.2.b Facts, reports, documents, records and accounts information related to the ultimate owner, partner and other persons of the entity;
 - 18.1.2.c in the case, where of joint investment fund, the information about shares, equity participation, voting rights and other interests, In the case, where of Trust Fund, the information about the payment settlement operator, authorized representative and the beneficiary.
 - 18.1.3 "Financial institution" means any person other than individual operating banking, non-banking the financial, custodians, savings, investment and insurance activities defined with the purposes to implement the agreement specified in Article 18.1.5 of this Law;
 - 18.1.4 "Party" means a party involved in the agreement
 - 18.1.5. "Agreement" means the international agreement, treaty or convention that Mongolia concluded with other countries to the exchange information for tax purposes, including the automatic exchange of information;
 - 18.1.6 "Request" means an application submitted by one party to the other within the scope of the agreement specified in Article 18.1.5 of this Law;
 - 18.1.7 "Requesting country" means the country sending a request for information within the scope of the agreement specified in Article 18.1.5 of this Law;
 - 18.1.8 "Electronic data" refers to the data processed and stored in electronic form as specified in Article 18.13 of this Law;
 - 18.1.9 "Authorized person " means a member of the Cabinet in charge of finance and budget affairs or authorized person designated by him/her, for the foreign country, the person authorized by the contracting party within the framework of the agreement;
 - 18.1.9 "Agreement between the authorized persons" means a bilateral or multilateral agreement or contract concluded between the authorized persons designated by the parties to the agreement or contracting parties, for the purpose of implementing the agreement referred to in Article 18.1.5 of this Law, interpreting and clarifying the provisions of such agreement.
- 18.2. The exchange of information with the foreign authorized persons through the

authorized person, within the scope of the agreement concluded between Mongolia and other countries shall apply only to the information on tax related matters specified in Article 18.1.2 of this Law.

- 18.3. The authorized person referred to in Article 18.1.9 shall have the following rights and obligations:
 - 18.3.1. The following activities may be carried out in order to fulfill the request referred to in Article 18.1.6 of this Law:
 - 18.3.1.a to receive reports and information from any person or entity;
 - 18.3.1.b to collect and deliver the relevant information and evidences to the person requesting information, for the purpose of implementing Article 18 of this Law and the agreement;
 - 18.3.1.c to deliver the documents and materials;
 - 18.3.1.d The authorized person shall undertake the general operations referred to in the Articles 20, 21, 22, 23 and 24 of this Law in order to implement the activities specified in the agreements and information exchange specified in Article 18.1.2 of this Law;
 - 18.3.1.e Other actions as required.
 - 18.3.2 To exchange information and automatically exchange the information referred to in Article 18.1.2 of this Law with the Contracting Parties for tax purposes, as well as to implement agreements concluded by authorized persons in conformity with the provision 18.1.5 of this Law;
 - 18.3.3 To determine the expenses to be incurred within the scope of the agreements referred to in Article 18.1.5 of this Law, calculate and allocate fairly the expenses to be incurred in connection with any request;
 - 18.3.4 To enter into agreements with the authorized person and approve the procedures on collaboration with them in order to implement the agreements referred to in Article 18.1.5 of this Law;
 - 18.3.5 To perform other functions as stated in this Article.
- 18.4 The authorized person shall provide assistance to the requesting country in accordance with the conditions of the agreement concluded with the particular country.
- 18.5 The authorized person after receiving the request referred to in Article 18.1.6 of this Law, shall fulfill the request in accordance with the relevant agreement and this provision;
- 18.6 In the case, where the authorized person considers it is necessary, he/she/it may request the additional information from the requesting country referred to in Article 18.1.7 of this Law.
- 18.7 Upon request of the Agreement Party, the authorized person shall collect the information stipulated in Article 18.1.2 of this Law and other information required that is in possession and control of any person or financial institution by delivering the notification specified in Article 18.8 of this Law to financial institutions and shall provide to the authorized person of the country that entered into agreement.
- 18.8 The notification referred to in Article 18.7 may contain the following information:18.8.1 The deadline to provide the information;

- 18.8.2 The form the documents shall be provided in as required by the authorized person whether it shall be its original or a copy;
- 18.8.3 Information on whether the document shall be officially approved.
- 18.9 The information referred to in Article 18.1.2 may be collected in a form of witness testimony based on the request of the authorized person.
- 18.10 The deadline referred to in Article 18.8.1. of this Law shall not exceed 14 (fourteen) calendar days and in the case, where it is considered necessary the authorized person may set a different timeframe.
- 18.11 The authorized person may store and make a copy/copies of the information referred to in Article 18.7 of this Law.
- 18.12 It shall be prohibited to demand any information obtained by virtue of the law through the notification referred to in Article 17.7 of this Law.
- 18.13 Where the information obtained through notification is stored in an electronic form, it shall be converted into a document form without changing its content and reprocessed.
- 18.14 The authorized person shall deny the request where it is confirmed that such request is not consistent with the relevant agreement and shall immediately notify the requesting country about such inconsistencies.
- 18.15 If the request is denied the authorized person and the requesting country shall resolve the issue according to the provisions of the relevant agreement.
- 18.16 The documents and notifications may be delivered to the person/s concerned in person, by mail or in the form established by a member of the Cabinet in charge of finance and budget affairs.
- 18.17 The authorized person may demand the organizations referred to in Article 18.1.3 of this Law the necessary information with the set time frame in a specific form in order to implement automatic exchange of information within the scope of the agreement between authorized person/s.
- 18.18. The member of the Cabinet in charge of finance and budget affairs together with the Cabinet member in charge of legal affairs may approve and enforce the following procedures in order to implement the stipulation in Article 18.17 of this Law:
 - 18.18.1 Determining of the financial institutions that are required to deliver the reports and information;
 - 18.18.2 The content and templates of the information and electronic information that are required to be reported;
 - 18.18.3 Standards defining the comprehensiveness and level of details of the information to be reported;
 - 18.18.4 Procedures on implementation of the agreement on exchange of information;
 - 18.18.5 Procedures regulating the security of information and its storage;
 - 18.18.6 Procedures considered necessary for the implementation of activities related to the issues referred to in Article 18.15 and the automatic exchange of information.
- 18.19 Article 13 of this Law shall apply to relations pertaining to security of information of the Tax administration.
- 18.20 The person who has an obligation to implement or is implementing this Law shall

have the obligation to ensure confidentiality of the information obtained within the scope of the Article 18 of this Law and those within the scope of the agreement and may use such information for the sole purpose of fulfilling the duties and obligations under this Law and the agreement.

- 18.21 The Tax administration may use the information obtained by the authorized person with the purpose of implementing the tax legislation.
- 18.22 Where the confidential information has been delivered to the authorized person for the purpose of fulfilling the request or for the automatic exchange of information there shall not be the liability under other laws, for disclosing such information in connection with such action.
- 18.23 The action of the person who provided information in accordance with the Article 18.22 of this Law shall not be considered as violation of the guarantee of the confidentiality provided to other party, and such person and/or his/her employer shall not be liable for such action.
- 18.24 If any person is involved in a civil or criminal case for disclosing the information obtained by virtue of Law, such person shall not be a subject for the protection specified in Article 18.22 of this Law.
- 18.25 Any damage caused by the action or inaction of the authorized person, or the person delegated by the authorized person, during performing his/her/its official duties prescribed by this Law it shall not serve as a ground for civil and criminal liability.
- 18.26 The provisions of this Article shall prevail regardless of the limitations in connection with confidentiality of information that are regulated by other legislation.
- 18.27 Where the provisions of this Law and the provisions of the agreement conflict with the provisions of other legislation, the provisions of this Law and the provisions of the agreement shall prevail.

CHAPTER FIVE

GENERAL TAX ASSESSMENT AND TAX COLLECTION ACTIVITIES

Article 19 General tax assessment and collection activities

- 19.1. The State tax inspectors shall have a right to conduct common operations such as to collect data, information and proof of evidence, do inspections, inventory audits and do time and motion study with the purpose of determining the taxes to be imposed and collecting taxes by accessing the taxpayers' premises and warehouses.
- 19.2. The State tax inspectors shall present their state tax inspector's identification card and explain the purpose of their activities in implementing the common operations specified in Article 19.1 of this Law;
- 19.3 The Police organization shall provide support under the Article 15.1.7 of the Law on Police⁸ to the state tax inspectors where the taxpayer has used force or an organized resistance during the general operations being undertaken.

⁸ Law on Police Department; "State Information" Edition No.08, 2017

- 19.4 The procedures related to accessing the taxpayers' premises and warehouses with the purpose of collecting data, information and evidence, doing inspections, inventory audits and doing time and motion study as stipulated in Article 19.1 of this Law shall be approved by a head of the state administrative body in charge of tax affairs.
- 19.5. The Regulation on implementation of the operations specified in Article 19.3 of this Law shall be approved jointly by the Cabinet members in charge of finance and budget affairs and justice and internal affairs.

Article 20 Accessing the premises and warehouses

- 20.1. State tax inspector shall have rights to access the taxpayers' industrial and/or service premises, offices, warehouses and cellars that are not prohibited by law, and that are being used for the purpose of earning income, storing the taxable items, tax related information, data, surveys and other documents; and do time and motion study, do inspections, inventory audits; to temporary sequestrate the documents and property and conduct audits.
- 20.2 State tax inspectors shall have a right to access to computers, hardware equipment and software systems of the taxpayer containing information on the taxpayer's income, expenses and transactions in addition to the premises and warehouses, with the purpose of collecting data, information and evidence.
- 20.3 The guidance on the operations referred to in Article 20.1 of this Law shall clearly reflect in which of the taxpayer's premises and the warehouses such operations shall be carried out and such operations shall be carried out under the official assignment of the relevant tax authority.
- 20.4 It shall be prohibited to carry out operations referred to in Article 20.1 of this Law in the foreign diplomatic representatives' premises, consulates and offices of the international organizations, and workplaces of the officials of diplomatic standing and privileges.

Article 21 Collection of data, information and documentation

- 21.1 The Tax administration shall adhere to the following procedures when collecting data, information and documents:
 - 21.1.1 To make records and get signature when temporarily obtaining the original copies of the data, information and documentation required by the Tax administration;
 - 21.1.2 To document the data, information and documentation by making copies, taking photographs and video, audio or other recordings when necessary;
 - 21.1.3 To obtain written explanations and references, or to produce records and have them signed by relevant persons where inquiries or interviews were conducted;
 - 21.1.4 To obtain other data, information and documentation similar to those stated in Articles 21.1.1, 21.1.2 and 21.1.3 of this Law.
- 21.2 The Tax administration shall secure copies of substantiation, copies of documentation, data, surveys, account statements, other relevant documents and information required for ensuring tax legislation compliance from the taxpayer, economic entities,

organizations, individuals and financial institutions dealing with the taxpayer free of charge

- 21.3 Where the equipment of other parties is used for making copies or documenting the data, information and documentation specified in Article 21.2 of this Law, the payment for such use shall be paid by the tax administration on the basis of the market price or mutually agreed price.
- 21.4 The Tax administration shall have a right to demand the data, information and documentation, including prices, payments, fees, charges and contracts used by the taxpayer in selling, purchasing, human resources, technical services and coproduction and operations from the taxpayer and third party that worked with the taxpayer;
- 21.5 The Tax administration may secure information from a third party that is in relations with a taxpayer in accordance with the following procedures:
 - 21.5.1 To have a full access to the premises, warehouses, documents and materials, and computers that contain the information;
 - 21.5.2 To demand the written information and documents;
 - 21.5.3 To summon to a certain place at certain time to get information.

Article 22 Conducting inspections

- 22.1. The Tax administration shall adhere to the following procedures when conducting inspections:
 - 22.1.1. To have an independent witness in presence who has full legal capability, reached 18 years of age, has no conflicts of interests, and has no subordination or vice versa relationship to the taxpayer, to the Tax administration or the State tax inspector;
 - 22.1.2. To have the possessor of the document or property being subjected to inspection or his/her legal representative in presence, or in the case, where it is not possible, a representative from the relevant local administrative body;
 - 22.1.3. To take notes of the inspection and get signature of people who participated or present during the inspection; where they refuse to sign, to give them an opportunity to explain the reason of not signing and attach the explanations to the notes.
- 22.2. The Tax administration and the state tax inspectors shall have the right to conduct an inspection regardless of the difference in ownership or possession status of the items to be subjected to the inspection.
- 22.3. The Tax administration shall have a right to collect data, information and documentation to be used for tax collection and tax audit during the course of inspections.

Article 23 Conducting inventory audits

- 23.1. The Tax administration shall adhere to the following procedures when conducting inventory audits:
 - 23.1.1. When conducting an inventory audit of goods, property and cash, the taxpayer or his/her legal representative or accountant, or a representative from the

relevant local administrative body shall be in presence; and the state tax inspectors shall produce records and notes of such audit;

- 23.1.2. The records and notes of such audit shall be signed by the state tax inspector who conducted such audit, and the individuals who were in presence during such audit; and in the case, where they refuse to sign, to give them an opportunity to explain the reason of not signing and attach the explanations to the notes.
- 23.2 The Tax administration shall have a right to collect during the inventory audits the data, information and documents to be used in tax collection and tax audit.

Article 24 Time and motion study

- 24.1. The Tax administration shall adhere to the following procedures in doing time and motion study:
 - 24.1.1. To do time and motion study of a taxpayer with or without prior notice to the taxpayer, for the purposes of defining taxes payable by the taxpayer and determining the volume, income and cost of production and services;
 - 24.1.2. To involve relevant specialists in the time and motion study and use necessary measuring devices;
 - 24.1.3. To do estimation and issue conclusions for the time and motion study, make notes, and have the people who were present to sign such notes; and in the case, where they refuse to sign, to give them an opportunity to explain the reasons of not signing and attach the explanations to the notes.

PART II TAX MANAGEMENT AND REGULATION

CHAPTER SIX

REGISTRATION OF TAXPAYERS, TAX ASSESSMENT, PAYMENT AND FILING TAX RETURNS

Article 25 Registration of taxpayers

- 25.1. The person that has the obligations to pay taxes or withhold taxes under the tax Law shall be registered a taxpayer.
- 25.2. The following individuals shall be registered as a taxpayer and provided a taxpayer identification number:

25.2.1. Citizen of Mongolia;

25.2.2. Citizen of a foreign country whose specified in Article 5.1.5 of the Law on Status of a Foreign Citizen⁹.

- 25.3. The registration of taxpayers shall be undertaken in accordance with the general procedures referred to in the Article 26 of this Law.
- 25.4 The procedures for registering taxpayers shall be regulated in detail by the Law on

⁹ Law on the status of foreign citizen; "State Information", Edition 32, 2010.

particular type of tax.

25.5. The registration of a non-resident shall be undertaken based on his/her certificate of residence.

Article 26 General procedures for registering taxpayers

- 26.1. Person obligated to pay taxes as specified in Article 25.1 of this Law shall be registered as taxpayer to the integrated tax registration information system.
- 26.2. The Tax administration shall register a newly established or registered entity based on the information of the authorized body as a taxpayer, issue a taxpayer identification number and certificate, create a taxpayer's dossier.
- 26.3. The taxable items shall be registered to the integrated tax registration and information database based on the information of the authorized registration body that registers the information on owners, possessors or users of the taxable items, or the person/s with taxable items, as well as information of the authorized body that registers the information on licenses issued to the taxpayer or transferred for ownership, possession or use, or taxpayers' request.
- 26.4. A taxpayer shall register the taxpayer registration data, its update and the information specified in Articles 26.2 and 26.3 of this Law within 7 days on his/her own to the integrated tax registration and information database or to confirm on time within the same period and record on the taxpayer's certificate upon notification from the tax administration.
- 26.5 The taxpayer information in the tax administration integrated registration and information database shall be open to the taxpayer and taxpayer shall be responsible for accuracy of the information.
- 26.6 Where the tax administration is to modify the information specified in 26.3 and 26.4 of this law based on other third party information if it deems necessary, the taxpayer shall be informed and confirm the change within the period specified in Article 26.4 of this Law. If the Taxpayer failed to confirm, they shall be considered as a risk and recorded in the file as a basis for an audit.
- 26.7 The procedures on taxpayer registration shall be approved jointly by the head of the public administration bodies in charge of tax affairs and state registration.
- 26.8 The legal entity of Mongolia shall have an obligation to register its subsidiary or a branch, or representative office or permanent establishment that have been set up in a foreign country with the Tax administration.
- 26.9 A citizen of Mongolia who is a resident taxpayer of Mongolia shall have an obligation to register the name and address of the entity or organization established in a foreign country with the Tax administration.
- 26.10 A holder of a license for oil, radioactive minerals, land title, or right to use the land shall register the information on the ultimate beneficial owner with the Tax administration.
- 26.11 A license holder for oil, radioactive minerals, land title, or right to use the land shall register the information on the change of ultimate beneficial owner with the relevant tax administration within 30 (thirty) days after the decision on it is made.
- 26.12 Where license holder's own and/or ultimate beneficial owner's shares are listed on the

foreign and/or domestic stock exchanges regardless of what is stated Article 26.11 of this Law, the holder of the license for oil, radioactive minerals, land title, or right to use the land shall register the information on the change of ultimate beneficial owner with the relevant tax administration in accordance with the form approved by the Tax administration within July 20; and the end-of-the-year information within February 10 of the following tax year.

Article 27 Related parties

- 27.1 The following persons shall be considered as related parties when one person or more persons and entities may directly or indirectly interfere in the activities on the assets, supervision and management of 2 (two) or more legal entities and by this way influencing the conditions and economic results of the transactions:
 - 27.1.1 The taxpayer's father, mother, sibling, child, grandfather, grandmother, grandchildren, spouse, partner and their parents and siblings;
 - 27.1.2 The persons related to the group referred to in Article 6.1.8 of this Law;
 - 27.1.3 The person that holds at least 20 (twenty) percent of shares or equity participation or voting rights directly or indirectly;
 - 27.1.4 The person entitled to receive directly or indirectly at least 20 (twenty) percent from the profit, or from the remaining assets after liquidation;
 - 27.1.5 The entity in which a third party holds directly or indirectly at least 20 (twenty) percent of shares or equity participation/capital or voting rights;
 - 27.1.6 The entities in which a third party is entitled to receive directly or indirectly at least 20 (twenty) percent from the profit, or the remaining assets after liquidation;
 - 27.1.7 The persons that have relations referred to in Articles 27.1.3, 27.1.4, 27.1.5, and 27.1.6 of this Law and that are directly or indirectly owned or possessed by the person referred to in Article 27.1.1 of this Law;
 - 27.1.8 The persons specified in Article 27.1 of this Law, or the person who has the right to appoint them, or successor of the rights and obligations thereof or has been elected to represent them;
 - 27.1.9 The persons specified in Article 27.1 of this Law and the subsidiaries and branches and the permanent establishment of related entities;
 - 27.1.10 The persons that established relations with a sole purpose of reducing the taxable income and increasing the losses of the resident taxpayer of Mongolia;
 - 27.1.11 Other persons that fall under the definition specified in Article 27.1 of this Law.
- 27.2 Where shareholders entered into an agreement to act from a unified position in making a decision related to the entity's activities, directly or indirectly, and make decisions based on this agreement, such shareholders shall be considered as one entity in terms of shares and equity participation/capital referred to in Articles 27.1.3, 27.1.4, 27.1.5, 27.1.6 of this Law.
- 27.3 The indirect participation shall be determined by multiplying the proportions of direct participations. In the case, where the direct participation exceeds 50 percent, it shall

be considered as 100 percent participation.

Article 28 Tax assessment and payment

- 28.1 The taxpayer shall self-assess the taxes payable in accordance with the tax law, and make payment to the budget within the timeframe specified in the Law.
- 28.2 The taxpayer, when undertaking the tax assessment shall adhere to the general procedures referred to in this Law, and shall fully use the cash register, equipment, computer and other supplementary tools that have the functions of registering and documenting the income and expense transactions, producing electronic payment receipts, printing, sending, transmitting the information to the integrated tax registration and information database; and that are connected to the integrated system and that meet the requirements of standards; and shall send and register the sales information with the integrated tax registration and information database within 14 (fourteen) days.
- 28.3 When it is impossible to determine the taxpayer's income and expenses due to the taxpayer's failure to compile the book records, failure to maintain the accounting records, and failure to connect to the integrated tax registration and information database; or when the taxpayer has used unrealistic prices in determining the taxable income or expenses deductible from the taxable income, the taxes shall be assessed based on the reference prices and through transfer pricing adjustments.
- 28.4 Each time the taxable property/assets or rights are transferred to or from others' ownership, possession or usage, the taxpayer shall have an obligation to deliver respective documents to the Tax administration;
- 28.5 The taxpayer shall have an obligation to print a payment receipt with the unique number from the user system or send it electronically each time a sale has taken place.
- 28.6 The person that has performed the legal obligation to do tax assessment, withhold taxes and pay taxes to the budget shall not be paid any fees for performing his/her/its duties.
- 28.7 A tax withholder shall withhold taxes from the persons that have an obligation to pay the particular type of tax in accordance with the tax legislation.
- 28.8 The taxes shall be registered, assessed, reported and paid in MNT/togrogs, the national currency of Mongolia.
- 28.9 The relations arising from the tax assessment and payment shall be regulated in detail by the law on particular type of taxes.
- 28.10 Taxpayer shall be obligated to comply with the legislation and adhere to the guidelines, methodology, forms, guidance, rules and procedures issued by the Tax administration.

Article 29 Producing and filing the tax returns

- 29.1. The taxpayer shall file the tax return electronically or in paper in accordance with the approved form and instructions to the relevant tax administration within the timeframe as prescribed in the law; and shall perform the following duties:
 - 29.1.1 To compile the book records, maintaining the accounting in accordance with the established procedures and accounting standards based on payment

receipts, and produce tax returns based on the balance statements of financial and commercial activities;

- 29.1.2 To produce calculations and reports related to the tax assessment and payment, and submit them to the tax administration within the prescribed time period;
- 29.1.3. To accurately report the taxes withheld to the relevant tax department within the timeframe prescribed by law;
- 29.1.4. Where the documents and information pertaining to tax returns are in a foreign language, these shall be translated into the Mongolian language, and any cost associated with the translation shall be borne by the taxpayer.
- 29.1.5. The taxpayers and the person that is obligated to compile the evidences and maintain records shall keep such evidences and records in the territory of Mongolia until the statute of limitations for tax payment has lapsed.
- 29.1.6. Where the payments and settlements to be reflected and included in tax returns were made in a foreign currency, these shall be expressed in MNT/togrogs by a calculation using the official exchange rate of Bank of Mongolia of the day of the transaction.
- 29.2. The due date for filing tax returns and paying taxes shall be established by the Law; and unless otherwise stipulated by the law the due dates for paying taxes and filing tax return shall be the same.
- 29.3. Where the dues date for paying taxes and filing tax returns falls on a weekend or public holiday, the previous business day shall be considered to be the deadline for paying taxes and filing tax returns.
- 29.4. The head of the state administrative body in charge of tax affairs may extend the due date to receive the tax returns by up to seven (7) days when necessary, and a prior notice shall be made to the public on such extension.
- 29.5. The taxpayers eligible for tax credits and/or exemptions in accordance with the legislation, shall not be relieved from the duty to file their tax returns, and such tax returns shall serve as a main document allowing them to receive a tax credit on and/or exemption from the tax of the particular type.
- 29.6. The tax returns shall be signed by the authorized official, or the taxpaying individual, or their legal representatives, and the persons who have produced or participated in the production of the tax returns.
- 29.7. The tax returns sent electronically shall be verified by an electronic signature; and in the case, where it is not verified in this way, the tax returns shall be filed to the Tax administration in paper.
- 29.8. A head of the state administrative body in charge of finance and budget affairs shall approve the procedures on defining the electronic documents, setting out the requirements applicable thereto and storing such electronic documents.

Article 30 Receiving and processing tax returns

- 30.1. The Tax administration shall oversee whether the taxpayers have filed their tax return on time prescribed by law, and whether they have accurately assessed their tax liabilities and are paying taxes.
- 30.2. When the tax return is received, the following processing shall be done to review the

returns and ensure accuracy and correctness of tax assessment and payments:

- 30.2.1. Whether the tax returns have been prepared in accordance with the approved forms and instructions without any correction of errors thereon, and whether they have been approved with signatures or seals or stamps of the taxpayer, or other respective person/s or filed electronically in accordance with the relevant procedures;
- 30.2.2 Whether the tax returns were filed within the time period prescribed by law;
- 30.2.3 Whether the documents and information attached to the tax returns are complete;
- 30.2.4. Whether the tax returns were produced on the basis of accounting records with regard to the legal entities, or the income and tax registration book and other relevant documents with regard to the private individuals;
- 30.2.5. Whether the accounting records and the tax return data are consistent;
- 30.2.6. Whether the amounts in different tax returns are consistent in between and with the amounts in the receipts and information attached to one, and whether there are any calculation errors;
- 30.2.7. Whether the tax credits and exemptions included in the tax returns have been calculated and determined in compliance with the legislation;
- 30.2.8 Whether the tax accounts balance reflected in the return and the tax paid during the filing period, are consistent with the records held by the Tax administration;
- 30.2.9. Whether the information from the third parties in the Tax administration's integrated registration database that relate to the reporting period, is consistent with the data in the tax returns.
- 30.3. The Tax administration shall review the tax returns in accordance with Article 30.2 of this Law, and accept returns with no discrepancies; and the primary and other relevant proof of evidence may be demanded if necessary.
- 30.4. Where Tax administration identifies discrepancies when reviewing the tax returns as stipulated in Article 30.2 of this Law, it shall deliver a notice to the taxpayer requiring to clear the discrepancy within 3 (three) business days after such identification.
- 30.5. The taxpayer shall have an obligation to adjust the discrepancy specified in the notice and file the revised tax return within three (3) business days after receiving the notice referred to in Article 29.4 of this Law; and the Tax administration shall accept such tax return.
- 30.6 Where the taxpayer considers the demand to be unjustified, he/she/it shall deliver a written explanation electronically or in paper form to the Tax administration within the time period referred to in Article 30.5 of this Law;
- 30.7. After receiving the explanation referred to in Article 30.6 of this Law the Tax administration shall receive the tax return within five (5) business days.
- 30.8. Where explanation referred to in Article 30.6 is not filed on time, or the Tax administration considers that the explanation is unjustified, it shall record the relevant information in the integrated tax registration and information database; and it shall serve as a ground to conduct tax audit on issues related tax assessment and tax payment for that reporting period and determine the tax liability.

- 30.9. Failure to accept a tax return during returns processing shall not serve as a ground not to charge due loss.
- 30.10. The procedure on producing, filing, acceptance, processing and making adjustments shall be approved by the head of state administrative organization in charge of tax affairs.
- 30.9. The Cabinet member in charge of finance and budget affairs shall approve the procedures on regulating the discrepancies between the indicators in the tax returns, the forms/templates of the tax return, guidance on filling in the form and adjustments of discrepancies.

Article 31 Making adjustment to the tax return

- 31.1. The taxpayers may adjust their tax returns in the subsequent tax year.
- 31.2. In the case, where the taxpayer makes an adjustment in a tax return resulting in a reduced tax liability, they shall file the adjusted tax return together the primary and other relevant documents that prove such adjustment.
- 31.3. The Tax administration when receiving the adjusted tax return shall undertake the activities referred to in the Article 30 of this Law.
- 31.4 No adjustments shall be made in accordance with the article stated in Article 31.1 once the taxpayer has been notified that a tax audit is to be conducted.
- 31.5 Adjustments made to the tax returns based on taxpayer's request shall not constitute grounds for relief from a due loss for taxes unpaid within the timeframe prescribed in law.
- 31.6 The adjustments to the tax returns that resulted in a reduced tax liability shall not constitute grounds for changing the amount of due losses calculated before the adjustment.

CHAPTER SEVEN

INTEGRATED TAX REGISTRATION AND INFORMATION DATABASE

Article 32 Integrated tax registration and information database

- 32.1. The Tax administration shall have an integrated tax registration and information database. The Tax administration shall use the information system and technology for the purpose of performing its functions and exchange of information; and shall operate fully ensuring their confidentiality and reliability.
- 32.2. The integrated tax registration and information database shall have the following purposes:
 - 32.2.1. To register and oversee the taxpayers, tax returns, tax assessment, tax payments and tax debts;
 - 32.2.2. To base the tax audit on risks;
 - 32.2.3. To ensure consistent nationwide compliance with the tax legislation;
 - 32.2.4. To ensure openness and transparency of activities of the Tax administration;
 - 32.2.5. To organize swiftly all types of services for taxpayers;
 - 32.2.6. To identify potential risks that might occur to the Tax administration's

activities as well as to taxpayers.

- 32.2.7. To reduce the tax management costs, including information management costs, and ensure expeditious, efficient and transparent reporting.
- 32.3. The Tax administration may use sources of information from other state bodies as well as other external and internal sources of information within the scope of the relevant legislation.
- 32.4. The Tax administration shall oversee the registration of the information with the integrated tax registration and information database, data enrichment, its safety and security, and data usage.

Article 33 Maintaining the integrated tax registration and information database

- 33.1. The following information and data shall be included in the integrated tax registration and information database:
 - 33.1.1. Taxpayers Registration and information on updates thereto;
 - 33.1.2. Records of taxes, due losses and penalties;
 - 33.1.3. Tax returns, reports and information from the electronic payment receipts system;
 - 33.1.4. Documents issued by the state tax inspectors and information on their fulfillment;
 - 33.1.5. Information on the decisions of the Tax dispute resolution council;
 - 33.1.6. Information on the court decisions and rulings on tax violations and disputes;
 - 33.1.7. Information received from relevant organizations;
 - 33.1.8. Information obtained from the state integrated information database in accordance with the laws and regulations;
 - 33.1.9. Third-party information;
 - 33.1.10. Tax legislation and other legal documents;
 - 33.1.11. Information on the Tax administration's human resources, budget, and assets;
 - 33.1.12. Information on tax debts, debt recovery and tax collection activities.
- 33.2. The Tax administration shall maintain the records specified in Article 33.1.2 of this Law in conformity with the legislation, and include in the tax registration full details of each taxpayer's tax liabilities due, tax credits or exemptions, due losses, penalties; their payments and settlements, as well as debts, based on original receipts and documents.
- 33.3 The head of the state administrative body in charge of tax affairs shall approve the procedures for compiling the integrated tax registration and information database, storage, protection and use of information in the database, and supervision of data usage.

Article 34 Obtaining the information from other organizations and cooperation

34.1. The Tax administration shall collect information from the third parties in respect of the taxpayers, and create the third-party information database, and use such information in tax audit, tax assessment, collection, and registration of taxpayers and

their risks; and the third parties referred to in Articles 34.3, 34.4, 34.5, 34.6, 34.7, 34.8, 34.9, 34.10, 34.11, 34.12, 34.13, 34.14, 34.15, 34.16, 34.17, 34.18, 34.19, 34.20, 34.21, 34.22, 34.23, 34.24, 34.25, 34.26, 34.27, 34.28 and 34.29 of this Law shall have an obligation to provide the Tax administration with the required information and cooperate with the Tax administration for the tax purposes.

- 34.2. Organizations and officials shall send the information specified in Articles 34.3, 34.4, 34.5, 34.6, 34.7, 34.8, 34.9, 34.10, 34.11, 34.12, 34.13, 34.14, 34.15, 34.16, 34.17, 34.18, 34.19, 34.20, 34.21, 34.22, 34.23, 34.24, 34.25, 34.26, 34.27, 34.28 and 34.29 of this Law in electronic form regularly for the purpose of the Tax administration to compile the third-party information database within 10th of each month unless the time is stipulated otherwise:
- 34.3. A Central state administrative body in charge of finance and budget affairs shall deliver the data on financial statements related to the taxpayer, information on foreign financed projects and activities, treasury department's expenditures, and information on special permits/licenses in each instance.
- 34.4 Commercial banks and non-banking financial institutions, credit and savings cooperatives and other authorized financial institutions shall prepare the following information and deliver to the Tax administration:
 - 34.4.1 Taxpayer's account information and information related to the accounts each time the Tax administration demands;
 - 34.4.2 The information on opening new payment accounts, savings accounts or other types of accounts with a bank, non-banking financial institution, savings and credit cooperative or other licensed banking and financial entity, or making changes and/or movements to their existing accounts, such information shall be sent to the Tax administration each time whenever such event occurs;
 - 34.4.3. Taxpayer's accounts transactions data based on the written request of the Tax administration for it
- 34.5. The Police department shall prepare the following information and deliver to the Tax administration:
 - 34.5.1. The information and research in its possession related to registration of citizens of Mongolia, foreign citizens and stateless persons, clarifying the address of such people that is not subject to confidentiality of the individual's privacy upon the request from the Tax administration;
 - 34.5.2. The information on holders the firearms, the movement and removals of such firearms, the information on purchase or country's border crossing of firearms, bullets and other devices similar to firearms, and information on individuals and legal entities that have a permission;
 - 34.5.3 The information on special permits/licenses for contracted security guards;
 - 34.5.4 The information on drivers-training schools, courses and registration of the driving licenses;
 - 34.5.5 The information regarding tax evasion crimes and its proceedings
- 34.6 The police department shall cooperate in determining the address of, searches and the investigations of the taxpayer who has evaded taxes and escaped;
- 34.7 The customs organization shall ensure inclusion of the taxpayer identification number

on the custom's declaration and send the information related to exports and imports activities of the taxpayer to the tax administration in each instance.

- 34.8. The state administrative body in charge of state registration matters shall prepare the following information and sent it to the Tax administration:
 - 34.8.1. The detailed state registration information of the citizens of Mongolia;
 - 34.8.2. The detailed state registration data and its updates of properties and assets registered in Mongolia;
 - 34.8.3. The detailed state registration data of the legal entities, and its updates.
- 34.9. The state administrative body in charge of intellectual property shall send the detailed information on the intellectual property, and authors, patent and certificate holders of inventions, industrial and other useful designs to the Tax administration in each instance.
- 34.10 The state administrative body in charge of immigration matters shall send the following information to the Tax administration in each instance:
 - 34.10.1. The information on residential addresses of foreign citizens and stateless individuals, the dates of entering and exiting Mongolian border, the information on persons who invited them, and their assets guarantee information;
 - 34.10.2. The information related to registration of foreign invested non-governmental organizations and its updates.
- 34.11 Other central state administrative and local bodies and, their management officials shall have the following obligations:
 - 34.11.1 To advocate the social and economic importance of taxes and provide support and assistance in creating conditions and opportunities for ensuring implementation of tax legislation;
 - 34.11.2 Where a state administrative body in charge of inspection matters or its officials has discovered information on violation of tax legislation while performing their official duties, they shall send such information to the Tax administration in each instance;
 - 34.11.3 To send to the Tax administration the information on registration of and changes in licenses; financing from the reserve funds and other funds in each instance;
 - 34.11.4 To cooperate with the Tax administration and provide assistance in tax audit, and provide with other required information;
- 34.12 The Stock Exchange shall send the following information to the Tax administration in each instance:
 - 34.12.1 The information on dispersion of the shareholders of the joint stock companies;
 - 34.12.2. The information on sales of shares of the joint stock companies;
- 34.13 The Financial Regulatory Commission shall send the following information to the Tax administration:
 - 34.13.1 The information related to the registration of and changes to the legal entities holding the special permits/licenses issued by the Financial Regulatory Commission in each instance;

- 34.13.2 The information on traded securities in each instance;
- 34.13.3 The registration data and detailed information of individuals who have registered with the Financial Regulatory Commission and that have a right to undertake activities on the financial markets.
- 34.14 Central securities depository shall send the following information to the Tax administration in each instance:
 - 34.14.1 The information on registration of and changes in securities, and payments and settlements;
 - 34.14.2 The information on changes in accounts with the Central securities depository;
 - 34.14.3 The information on payments of the dividends of the joint stock companies;
- 34.15. The state administrative body in charge of mineral resources and petroleum matters shall send the following information to the Tax administration in each instance:
 - 34.15.1. The information related to the mineral resources and petroleum sector;
 - 34.15.2. The information related to license holders, those engaged in mining production, the information on strategically important deposits.
- 34.16 The border protection body shall send the information related to citizens who passed the border based on the request from the Tax administration:
- 34.17. The state administrative body in charge of road and transportation matters shall send to the Tax administration information regarding owners, possessors of and changes in ownership and possession of road vehicles in Mongolia.
- 34.18. The state administrative body in charge of road and transportation matters provide support and assistance in collection of taxes on road vehicles and automobiles, and collection of fees for air pollution and organize joint audits.
- 34.19 Bank of Mongolia shall send the following information to the Tax administration:
 - 34.19.1 The information on the sales of gold, and information on the credit database.
 - 34.19.2 The information on the transactions for the amount MNT 20 million or more in cash or foreign payment settlement transaction by the person referred to in Article 4.1 of the Law on fighting against money laundering and financing of terrorism¹⁰, in relation to potential money laundering and tax avoidance and noncompliance issues thereto under the information exchange and cooperation agreement to be signed with the Tax administration.
- 34.20 The state department of probe testing shall send the information on gold submission and other required information in each instance.
- 34.21 The notaries and other persons with a mandate to register contracts and transactions shall send the information on the contracts and transactions related to taxable items shall send information to the Tax administration.
- 34.22 The state administrative body in charge of land affairs shall exchange the information related to the registration of the persons that make land payments, and the taxpayer of the tax on land as an immovable property, information on assessment of land

¹⁰ Law on fighting against money laundering and financing of terrorism; "State Information", Edition No.24, 2013

payments, and its payment and assessment of immovable property tax on land in each instance.

- 34.23 The state administrative body in charge of health insurance shall send electronically the detailed information on individuals and legal entities that pay the health insurance premiums, in each instance.
- 34.24 The state administrative body in charge of social insurance shall send electronically the detailed information on individuals and legal entities that pay the social insurance premiums, in each instance.
- 34.25 The state administrative body in charge of state property policy and coordination shall send the following information to the Tax administration in each instance:
 - 34.25.1 The detailed information on performance of public procurement of goods, works and services; the information on the individual/s and the legal entity/s who participated in such procurement, the detailed information on the budgeted cost, the individuals and the legal entities that concluded contracts.
 - 34.25.2 The detailed information on the state-owned enterprises, locally owned entities, and the entities with the state participation.
- 34.26 The central state administrative body in charge of construction and urban development, land and cartography shall send the information on individuals and legal entities that hold the special permits/licenses, in each instance.
- 34.27 The state organizations, and the state-owned enterprises, the locally owned entities, and the entities with the state participation shall send the information similar to those, at the demand of the Tax administration immediately.

CHAPTER EIGHT RISK MANAGEMENT OF THE TAX ADMINISTRATION

Article 35 Risk management of the Tax administration

- 35.1. The Tax administration shall carry out activities to identify, manage and control the potential risks of tax relations during its implementation of the tax legislation.
- 35.2. The Tax administration shall adhere to the following principles in the implementing the risk management:
 - 35.2.1 Within the framework of the acting legislation of Mongolia, the Tax Administration shall pursue the lowest risk in achieving its goals.
 - 35.2.2 The risk management shall be comprehensive and continuous;
 - 35.2.3 The risk management shall be a part of the organization's planning and decision making;
 - 35.2.4 The risk management shall be aimed at the efficient allocation of the organization's resources and cost saving.
- 35.3 The Tax administration's risk management refers to a continuous, comprehensive activities aiming at identification in advance, analysis, determination and evaluation of the causes and circumstances of any action or inaction of the participants in the tax relations for failing to perform their obligations under the law; and the selection of the optimal ways to resolve such issues, and prevention from the risks.

- 35.4. The Tax administration shall implement the risk management activities in following stages:
 - 35.4.1 To determine the circumstances;
 - 35.4.2 To identify and register the risks;
 - 35.4.3 To evaluate and analyze the risks;
 - 35.4.4 To manage the risks and define the controlling measures;
 - 35.4.5 To control the risk management process.
- 35.5 The risk management system of the Tax administration is the set of activities based on the electronic system of calculations used in the tax administration management and professional and methodological activities within the scope of tax legislation.
- 35.6 The risk assessment and analysis referred to in Article 35.4.3 of this Law shall be conducted based on the information of the integrated tax registration and information database.
- 35.7 A risk management committee shall operate with the functions to update, change and abolish the indicators for calculating risks, to manage and mitigate the potential tax administration risks, facilitate review of the risk analysis results and to decide whether to apply the general anti-avoidance rules stipulated in Article 16 of this Law.
- 35.8 The members of the risk management committee shall be appointed and released by the Decree of the head of the state administrative body in charge of tax affairs, and the representative of the central state administrative body in charge of finance and budget affairs shall be included in the composition of the committee.
- 35.9 The indicators to be used in the risk assessment and analysis shall be set in consistency with the tax legislation, and approved by the head of the state administrative body in charge of tax affairs upon discussion by the risk management committee.
- 35.10 The taxpayers for tax audit shall be selected based on the results of the risk assessment and analysis referred to in Article 35.4.3 of this Law.
- 35.11 The Cabinet member in charge of finance and budget affairs shall approve the procedures for the risk management activities and the committee, in consistency with the risk management standards.

Article 36 Impossibility to determine the tax liability

- 36.1. When it is impossible to accurately determine a taxpayer's tax liability the Tax administration shall assess the tax using the reference price method and issue a tax reassessment report.
- 36.2. The Tax administration shall assess the tax by using reference price method based on the information available to it on the following grounds:
 - 36.2.1. the taxpayer did not maintain reports and records as prescribed in the Law;
 - 36.2.2. the taxpayer maintained incomplete or incorrect reports and records;
 - 36.2.3. the taxpayer's reports and records have been lost or destroyed;
 - 36.2.4. It becomes obvious from the comparison of indicators in tax returns with those in the financial statements that the tax has been under-assessed;
 - 36.2.5. The taxpayer has not been connected to the integrated tax registration and information database.

36.3. The procedures on assessment of tax liabilities through reference price method shall be approved by the Cabinet member in charge of finance and budget affairs.

Article 37 General principles applicable to transfer pricing

- 37.1 If the determinants of income, profits and the tax base in the terms and conditions of a controlled transaction differ from those of the uncontrolled transactions, and that resulted in decrease of the tax base, the tax base shall be increased by the amount of such discrepancy and the relevant tax shall be re-assessed.
- 37.2 The tax base for the controlled transaction shall not be less than the tax base for the comparable uncontrolled transactions.
- 37.3 For determining the tax base for the controlled transaction prescribed in Article 37.2 of this Law, whether the terms and conditions of such transaction is consistent with those of the comparable uncontrolled transactions shall be determined through the following:
 - 37.3.1 Price and terms of the transaction;
 - 37.3.2 Whether there was a real reason to do the transaction;
 - 37.3.3 Whether parties to the transaction have performed their duties, or whether the real transaction has taken place.
- 37.4 Where there were discrepancies between the contract terms and conditions, and the real execution of the contract concluded between the related parties, the tax base shall be adjusted taking into account the real execution of the contract, such as the participation of the parties to contract, their functions, execution, resources spent and the risks taken.

Article 38 Transfer Pricing Report

- 38.1 The Transfer Pricing Reports shall be classified as follows:
 - 38.1.1 An annual report on the transfer pricing transactions;
 - 38.1.2 Internal transfer pricing report;
 - 38.1.3 General transfer pricing report;
 - 38.1.4 Country by country report.
- 38.2 The taxpayers shall have an obligation to maintain and report the information on controlled transactions.
- 38.3 The taxpayers, shall provide the information related to transfer pricing report demanded by the Tax administration prior to and/or during the tax audit, in each instance.
- 38.4 The taxpayers shall deliver the annual report on the transfer pricing transactions together with the annual tax return to the relevant tax administration.
- 38.5 The domestic transfer pricing report shall contain the following information:
 - 38.5.1 The information on the business activities, business strategy and policy of the taxpayer residing in Mongolia or the permanent establishment;
 - 38.5.2 The information required for comparative analysis of the controlled transactions, information on comparable uncontrolled transactions, and the methodology used for transfer pricing, and other relevant information;
 - 38.5.3 Financial information on the transactions related to the taxpayer residing in

Mongolia;

38.5.4 Other information required as specified in Article 38.9 of this Law.

- 38.6 The general transfer pricing report shall contain the following information:
 - 38.6.1 The direct and indirect structure of ownership of the shares and equity participation of a group and the group participants;
 - 38.6.2 The geographical location of the business activities of a group and the group participants';
 - 38.6.3 The information on the major assets being used for core business activities, sales, purchases, supply channels and generating added value; and the information on the functions of the activities, and the risks born by the group and group participants, and large transactions that effected on the restructuring carried out in the particular fiscal year;
 - 38.6.4 The intangible assets owned or possessed by the group and group participants, their ownership structure and the transfer pricing policy in place with regard to the intangible assets;
 - 38.6.5 The financial transactions between the group and group participants and the transfer pricing policy they follow in connection to such transactions;
 - 38.6.6 The information on the financial and tax policy the group and group participants or particular taxpayer follow; the information on the one or bilateral advance pricing agreements concluded with the tax administrations of other countries;
 - 38.6.7 The information of related parties similar to those referred to in Articles 38.6.1,38.6.2, 38.6.3, 38.6.4, 38.6.5 and 38.6.6 of this Law and that are required for the procedure stipulated in Article 38.9 of this Law.
- 38.7 The person to issue country by country report and the detailed reporting relations shall be regulated in accordance with Article 27 of the Law on Corporate Income Tax.
- 38.8 The following taxpayers shall file the reports stipulated in Articles 38.1.2 and 38.1.3 of this Law together with the end-of-the-year tax return to the relevant tax administration:
 - 38.8.1 the taxpayer that earned sales income of MNT 6 (six) or more billion in the previous tax year;
 - 38.8.2 the taxpayer whose business activities are reflected in the consolidated financial statements of the group and that earned sales income of MNT 6 (six) or more billion in the previous tax year according to the consolidated financial statements of the group;

38.8.3 taxpayers with the foreign investment.

38.9 The template of the forms for each transfer pricing report referred to in Article 38.1 of this Law, instructions on filling in the forms, and the procedures on the detailed reporting relations shall be approved by the head of the state administrative body in charge of tax affairs in consistency with the internationally accepted standards and reference documents.

Article 38 Transfer price adjustment

38.1 In the case, where the taxpayer failed to produce the transfer price report, or filed

report whereby the determined tax liability is understated, the Tax administration shall make the main transfer price adjustment, re-assess the tax and have such taxpayer be liable for such actions.

38.2 The Tax administration, in addition to the main transfer price adjustment referred to in Article 38.1 of this Law, shall consider the difference after such adjustment as tax liability and shall make the second adjustment.

Article 39 Transfer price adjustments

- 39.1 If the taxpayer has failed to file a transfer pricing report or under-assessed and underreported their taxes, the Tax administration shall make transfer pricing adjustments, re-assess the taxes and charge liabilities stipulated by the legislation.
- 39.2. In addition to the main adjustments specified in Article 39.1 of this law, the Tax administration shall make secondary adjustments by deeming the difference in the price that resulted from adjustments as dividends for personal income tax and corporate income tax purposes.

Article 40 Methodology for transfer price adjustments

- 40.1.1. The following methods shall be used for transfer pricing adjustment:
 - 40.1.1 Comparable uncontrolled prices method;
 - 40.1.2 Resale price method;
 - 40.1.3 Cost-plus method;
 - 40.1.4 Transactional net margin method;
 - 40.1.5 Transactional profit-split method;
 - 40.1.6 Other methods that are consistent with the general transfer pricing principles stipulated in the Article 37 of this Law.
- 40.2 The Tax administration, when making the transfer pricing adjustments referred to in the Article 39 of this Law shall select and use the method from those stipulated in Article 40.1 of this Law, that is considered most appropriate, and set such price based on the principles of determining the real price taking into account the following conditions:
 - 40.2.1 The specifics of the controlled transaction;
 - 40.2.2 Conditions stipulated in Article 37.3 of this Law;
 - 40.2.3 The objective information that is comparable to the independent transaction;
 - 40.2.4 Level of comparability of the controlled and uncontrolled transactions
- 40.3 In selecting the method for making adjustments to the controlled transaction, the methods referred to in Article 40.1 of this Law shall be used alone or in combination by a comparison of the advantages and disadvantages of such methods.
- 40.4 The procedures on the selection and use of the most appropriate method for transfer pricing adjustment shall be approved by the Cabinet member in charge of finance and budget affairs.
- 40.5 The Tax administration for the purpose of transfer price adjustments may use the OECD guidelines on transfer pricing that is not regulated by the tax legislation and the procedures as specified in Article 40.4 of this Law, as long as it does not conflict with this Law and the legislative acts issued in conformity with this Law.

- 40.6 Where the taxpayer executed a controlled transaction with a person of the noninformant country, or failed to fulfill his/her/its obligations referred to in Article 39.1 of this Law, or misreported on transfer pricing, the Tax administration shall take the following measures:
 - 40.6.1 make re-assessment based on comparison to the open data of other comparable taxpayers, or the selective data from integrated tax registration and information database;
 - 40.6.2 For the purpose of making comparison the Tax administration may obtain from the taxpayer the transaction price without disclosing it, and in this case the Tax administration shall ensure the confidentiality of the taxpayer's information.
- 40.7. The tax administration shall include in list of non-informant country or region referred in Article 40.6 of this Law, the countries and regions that do not exchange information with Mongolia for tax purposes and those with risky tax system, and the list shall be published by the state administrative body in charge of tax affairs through their official website within the 10th of January each year and with any updates within 10 business days.

CHAPTER NINE CONDUCTING TAX AUDIT

Article 41 TAX AUDIT

- 41.1. The Tax administration shall conduct audits to check whether taxpayers have fully determined their tax liabilities and paid them on time.
- 41.2. The Tax administration shall conduct comprehensive and limited issue tax audit, based on general and special guidelines and under the assignment, in conformity with the international standards and legislation.
- 41.3. The simplified tax audit can be conducted based on the taxpayer's risks.
- 41.4 The tax administration shall conduct the audit on fulfilment of the taxpayers' obligations under the law, based on the risk assessment or the taxpayer's request.
- 41.5. Taxpayers shall be notified at least ten (10) business days in advance on tax audit to be conducted.
- 41.6. The head of the state administrative body in charge of tax affairs may establish the jurisdiction of tax audit taking into account the amount of income channeled by the taxpayers to the state and local budgets, as well as taking into account the type of tax, and the field of business activities.
- 41.7. The Article 41.5 of this Law shall not apply to the following activities that the Tax administration conducts for the purpose of overseeing the implementation of tax legislation:

41.7.1. Oversight on the implementation of the Law on Excise taxes¹¹;

¹¹ Law Excise Tax Stamp; "State Information", Edition No. 45, 2000

- 41.7.2. Oversight on whether the taxpayer is connected to the integrated tax registration and information database
- 41.7.3. Oversight on activities to create, print, provide, send and store e-receipts;
- 41.8. The Tax administration shall organize tax audit, make appointments and approve guidelines, taking into consideration professional skills and work experience of state tax inspectors with a view to preventing conflicts of interests.
- 41.9. The tax audit shall be undertaken by two (2) or more state tax inspectors.
- 41.10. The Tax administration shall exercise the following powers for the purpose of carrying out tax audits:
 - 41.10.1. To summon the taxpayers and the counterparty on the reasonable grounds, and obtain explanations with respect to their activities;
 - 41.10.2. To conduct general operation specified in the Article 6 of this Law;
 - 41.10.3. To obtain explanations and references pertaining to tax returns, accounting reports, accounts records, other financial documents, and information in the integrated tax registration and information database.
- 41.11. The Tax administration and state tax inspectors are prohibited to the following operations when conducting audits:
 - 41.11.1. To conduct audits on grounds other than those stated in Article 41.4 of this Law;
 - 41.11.2. A state tax inspector to participate as an expert in tax-related criminal or administrative proceedings as well as proceedings to investigate a violation.
- 41.12. Taxpayers shall have the following rights and obligations in relation to tax audits:
 - 41.12.1. To protect their rights and legitimate interests personally and/or through their authorized representative or technical adviser; to be present during a tax audit, and provide evidences and justification;
 - 41.12.2. To obtain or provide an explanation on tax assessments and payments, and the progress and outcome of audits;
 - 41.12.3. To provide the Tax administration with the financial and other documents necessary for the tax audit, electronically or in paper as required, and to undergo the tax audit.
- 41.13. The procedures on tax audit activities shall be approved by the head of the state administrative body in charge of tax affairs who shall also ensure the implementation of it.

Article 42 Tax re-assessment report

- 42.1. A state tax inspector shall issue a tax re-assessment report or a report card on the grounds specified in Articles 16.2, 16.3, 36.1, 37.1 and 41.1 of this Law; and the re-assessment report shall comprise of sections on notes and resolution; and the report card shall consist of notes section.
- 42.2. The re-assessment report shall either increase or decrease the taxpayer's tax liability; and any difference resulting from reduced tax liability shall be included in the calculation of the tax outstanding balance for the tax year covered by the report.
- 42.3. The tax re-assessment report and the report card shall have unified registration and numbering, and shall be valid together with the annexes thereto.

- 42.4. The tax re-assessment report and report card shall take effect once signed by the state tax inspectors who conducted the audit, and reviewed, validated and signed by the head of the unit in charge of.
- 42.5. The Tax administration and the state tax inspectors shall not present tax re-assessment report to the taxpayer before final approval in an official form.
- 42.6. The tax re-assessment report and the report card shall be handed over within seven (7) business days of its date of effectiveness, and a note about such delivery shall be made.
- 42.7. If the tax re-assessment report and report card cannot be handed over to the taxpayer, or to its authorized representative within the timeframe prescribed in Article 41.6 of this Law, or the taxpayer or its authorized representative has not received them in person, the relevant tax administration shall send them by mail to the address on the taxpayer's file within seven (7) days of the lapsing of such period.
- 42.8. The tax re-assessment report and report card shall be deemed as delivered in timeframe stipulated in Article 43 of the General Administration Law¹² after the date of sending them in accordance with Article 41.7 of this Law.

Article 43 Filing a complaint on tax re-assessment report

- 43.1. If the taxpayer does not accept the tax re-assessment report in whole or partially, a complaint can be filed to the Dispute Resolution Council specified in Article 46.1 of this Law within thirty (30) days after receiving it.
- 43.2. The taxpayer's failure to receive the tax re-assessment report within the timeframe specified in this Law shall not constitute grounds for not counting the time filing a complaint under the court or administrative procedures in accordance with the procedures set out by the law.
- 43.3. Filing of a complaint by a taxpayer under Article 43.1 of this Law shall not constitute grounds for cessation of payment of taxes, due losses and penalties imposed.
- 43.4. The Tax administration shall oversee and ensure the implementation of the tax reassessment reports and the penalty cards issued by the state tax inspectors.

Article 44 Resolving violations discovered during the tax audits

44.1. Where a violation stipulated in the Law on Violations¹³ has been discovered during the tax audit, such violation shall be resolved according to the Law on Violations Proceedings¹⁴.

Article 45 Audit for validation of value added tax assessment and its payment

45.1 The taxpayer's request to validate the value added tax assessment and its payment shall be received by the relevant tax office and transfer it to the large taxpayers' office at the state administrative body in charge of tax affairs upon review, validation and conclusion of proposal.

¹² General Administration Law; "State Information", Edition No.28,

¹³ Law on Violations; "State Information", Edition No.24, 2017.

¹⁴ Law on Violations Proceedings; "State Information", Edition No.24, 2017

- 45.2 The large taxpayers' office of the state administrative body in charge of tax affairs shall receive the proposal referred to in Article 45.1 of this Law, review the value added tax assessment and its payment and issue a validation report.
- 45.3 If the taxpayer does not accept the decision referred to in Article 45.2 of this Law, the taxpayer shall file complaint to the Dispute resolution council stipulated in Article 46.1 of this Law.

CHAPTER TEN DISPUTE RESOLUTION COUNCIL

Article 46 Dispute resolution council

- 46.1. A tax dispute resolution council (hereinafter referred to as the "dispute resolution council") with duties to investigate complaints filed by taxpayers in connection with the tax reports referred to in Article 6.1.26 of this Law, and requests referred to in Article 94.2 of the General Administration Law shall function at the Tax administration.
- 46.2. The dispute resolution council shall consist of the head and members.
- 46.3. A complaint filed by a taxpayer under the Article 46.1 of this Law shall be resolved by the dispute resolution council at the state administrative body in charge of tax affairs or at the dispute resolution council the tax administration of aimag or the capital city.
- 46.4. A dispute resolution council shall have 9 or 11 members. The Government shall approve the procedures on activities of the dispute resolution councils.
- 46.5. A dispute resolution council shall be set up with the following structure and members upon consultation with the management of the respective organizations:
 - 46.5.1. A dispute resolution council at the aimag or the capital city tax administration shall include representatives from the local administrative bodies, the Tax administration and non-governmental organizations representing the taxpayers;
 - 46.5.2. A dispute resolution council at the state administrative body in charge of tax affairs shall include representatives from the central state administrative bodies in charge of tax and legal matters, respectively, the representatives from the Tax administration and professional non-governmental organizations.
- 46.6. Members of a dispute resolution council shall be an accountant, finance specialist, economist or a lawyer and have work experience of more than 3 years.
- 46.7. For the purpose of investigating the taxpayers' complaints an independent expert shall work at the dispute resolution council with a function to conduct analysis on tax affairs and issue opinions/conclusions and recommendations; and such expert shall be a person with state tax inspector's title appointed by the head of the relevant tax department.
- 46.8. The secretary of the dispute resolution council shall be a state tax inspector appointed by the head of the relevant tax department as proposed by the chairman of dispute resolution council.

46.9. The chairman and the members of the dispute resolution councils at the aimag or capital city tax administration shall be appointed and released by the head of the state administrative body in charge of tax affairs, the chairman and the members of the dispute resolution council at the state administrative body in charge of tax affairs shall be appointed by the Cabinet member in charge of finance and budget affairs, respectively.

Article 47 Filing a complaint to the dispute resolution council, and its resolution

- 47.1. A taxpayer, an authorized representative of the taxpayer, or a tax consultant has a right to file a complaint to the respective Dispute Resolution Council within the timeframe prescribed in Articles 43.1 and 72.4 of this Law after receiving the tax reassessment report.
- 47.2. The complaint shall meet the requirements specified in the Article 10 of the Law on Settlement of complaints and grievances from the citizens to the government organizations and officials¹⁵.
- 47.3 When filing a complaint on re-assessment report, the taxpayer shall pay 10 percent of the unaccepted amount in the re-assessment report in advance, and such amount payable shall not exceed MNT 100 million.
- 47.4 Reimbursement of the advance payment of tax in accordance with Article 47.3 of this Law to the taxpayer based on the final decision of the Dispute Settlement Council and The Court on settlement of the complaint and claim filed with regard to the tax reassessment report shall be resolved as specified in Article 49 of this Law.
- 47.5 The complaint referred to in Article 47.1 of this Law shall be settled by the Dispute resolution council of the following jurisdictions:
 - 47.5.1. A complaint of a taxpayer that belongs to the tax administration of a aimag or the capital city shall be resolved by the dispute resolution council at that tax administration of the respective aimag or the Capital City; and
 - 47.5.2. A complaint of a taxpayer that belongs to the large taxpayers' unit shall be resolved by the dispute resolution council at the state administrative body in charge of tax affairs.
- 47.6 A dispute resolution council shall review the relevant tax re-assessment report, the complaint filed, request and other documents and information, determine the jurisdiction within three (3) days, and transfer any complaint that does not fall within that jurisdiction to the appropriate dispute resolution council in accordance with Article 47.4 of this Law.
- 47.7. The quorum of the dispute resolution council meeting shall be two-thirds of all members.
- 47.8. A dispute resolution council shall discuss the complaint at the council meeting, and resolve it by majority votes of the members attending the meeting.
- 47.9. A dispute resolution council shall investigate a complaint referred to in Article 46.1 of this Law within the scope of the taxpayer complaint only, and make a decision.

¹⁵ Law or settlement of citizens' complaints on public organizations and officials; "State Information", Edition No.07, 1995.

- 47.10. A dispute resolution council shall make a decision either to change, invalidate, leave or suspend the amount of tax re-assessed by the tax report; and the decision shall be in the form of a Resolution.
- 47.11. If either one of the following conditions occur while the dispute resolution council considers the complaint, the re-assessment report shall be sent back to the highest level tax administration for a review of the re-assessment for a period of up-to three months; and re-assessment report complained upon may be suspended once:
 - 47.11.1. if the number and accounting error in the tax re-assessment report would increase the total amount of the re-assessment, penalties and due loss;
 - 47.11.2. if the conditions of the complaint need to be further clarified, issues have been under-resolved and items subject to additional clarification are issues beyond the scope of the mandate of the dispute resolution council.
- 47.12. Where the Tax administration is to issue a new re-assessment, the previous reassessment report shall be abolished and where the new re-assessment is not issued on time specified in Article 47.11 of this Law, the dispute resolution council shall resolve the issue by reconsidering it.
- 47.13. The secretary of a dispute resolution council shall maintain the detailed records of matters discussed by the council and the grounds of its decisions, and disclose the council decisions via its website by ensuring confidentiality of private information of individuals, legal entities such as the name of the taxpayer, state tax inspector, and the expert.
- 47.14. A dispute resolution council shall have a right to send to the tax administration the recommendations for the purpose of eliminating the causes and conditions of disputes, and prevention from the violation of the tax legislation.
- 47.15 A dispute resolution council shall resolve a compliant within thirty (30) days after filing of the taxpayer's complaint, and deliver the decision to the parties to the dispute.
- 47.16. A dispute resolution council may extend the deadline for issuing a decision as stipulated in Article 47.15 of this Law once by up to thirty (30) days.
- 47.17. Where the taxpayer filing a complaint to a dispute resolution council fails to provide evidences as required by the expert state tax inspector within the timeframe prescribed in Articles 47.15 and 47.16 of this Law, the dispute shall be resolved based on the evidences provided.
- 47.18. A decision made by a dispute resolution council can be changed only by a court ruling.
- 47.19. Where a taxpayer does not accept a dispute resolution council's decision, the taxpayer shall have a right to appeal to the court within thirty (30) days after the delivery of the council's decision.
- 47.20. Where the dispute resolution council cannot resolve the taxpayer's complaint due to the reasons similar to those specified in Article 65.1.3 of the Law on settlement of the administrative cases at the court¹⁶, the dispute resolution council may suspend the

¹⁶ Law on Administrative Case Proceedings; "State Information", Edition No.09, 2016

discussion of the tax act.

Note: "calculation errors" shall be understood as the mistakes in quantitative expressions in the written act or it has an obvious calculation mistakes in arithmetic term, or digits' comma and etc.

CHAPTER TEN TAX ASSESSMENT, PAYMENT AND TAX DEBT

Article 48 Record of the tax assessment and payment

- 48.1 The Tax administration shall record the assessment and payment of taxes, penalties and due losses by each taxpayer.
- 48.2. The Tax administration shall record each taxpayer's tax payable, tax payment, tax credits or exemptions and the tax debts based on the tax returns, penalty sheets, and tax reports.
- 48.3. In the event of reduced tax liability as a result of a tax audit, the Tax administration shall make respective changes in the integrated tax registration and information database.
- 48.4. The procedures on recording the tax income, offsetting different taxes from the revenue account shall be approved by the Cabinet member in charge of finance and budget affairs.

Article 49. Tax refunds and off-setting

- 49.1. The Tax administration shall resolve taxes that have been overpaid by the taxpayers in the following order:
 - 49.1.1. To refund.

49.1.2. To off-set to other taxes payable during the period; and

- 49.1.3. To off-set to taxes payable in the following period if the taxpayer agrees.
- 49.2. Where the taxpayer has a tax debt, irrespective of the order referred to in Article 49.1 of this Law, the overpayment shall be off-set to pay the tax debt in the first instance.
- 49.3 The tax offsetting shall follow the order as specified in Article 52.1 of this Law.
- 49.4 The relations pertaining to refund of overpaid tax may be regulated in detail by the Law on particular tax type.
- 49.5. Where the overpaid taxes have been offset, the tax administration shall notify the taxpayer about that.
- 49.6. Refunds stipulated in Article 49.1.1 of this Law shall be a part of the budget.
- 49.7. The Tax administration shall have designated current accounts for tax credits, and refunds of the overpaid taxes in accordance with the law; and the procedures on maintaining such accounts and relations in connection with them shall be approved by the Cabinet member in charge of finance and budget affairs.

Article 50 Tax debt

- 50.1. The taxes, due losses and penalties that have not been paid within the timeframe prescribed below become tax debt (hereinafter referred to as "Tax debt"):
 - 50.1.1. For taxes determined by a taxpayer's tax returns, the day when the taxes shall have been paid and reported as stipulated in the tax legislation;
 - 50.1.2. For taxes determined by revised returns through returns processing and at the taxpayer's request, the day when the revised tax returns were received;
 - 50.1.3. For taxes, due losses and penalties established by the tax re-assessment report or penalty sheets, within fifteen (15) business days after delivery of such decision;
 - 50.1.4. For taxes not subject to filing tax returns in accordance with the tax legislation, the day when the taxes shall have been paid as stipulated in the tax legislation.
- 50.2. Where the tax re-assessment report has been finalized by a dispute resolution council or a court ruling, the amount of arrears stipulated in Article 50.1.3 of this Law shall be changed to reflect that decision.

Article 51 Tax bill

- 50.1. The Tax administration shall send a tax bill for payment of tax debt stipulated in Article 49 of this Law (hereinafter referred to as "tax bill") to a taxpayer, which shall reflect the following:
 - 51.1.1. The taxpayer's full name;
 - 51.1.2. The taxpayers' identification number;
 - 51.1.3. The date of delivery of the tax bill;
 - 51.1.4. The taxable item and grounds for tax arears payment;
 - 51.1.5. The amount of tax debt and penalties, the deadline to pay the tax debt;
 - 51.1.6. The place to pay the tax debt, account name and account number
 - 51.1.7. The requirement to pay the tax debt within ten (10) business days after delivery of the claim to the taxpayer
 - 51.1.8. Any other notice considered necessary by the tax administration.
- 51.2. The Tax administration shall send a tax bill to the taxpayer within 30 (thirty) business days after the tax debt arose.

Article 52 Order/sequence of the tax debt settlement

- 52.1. Tax debt shall be settled in the following order:
 - 52.1.1. Principal tax debt;
 - 52.1.2. Due losses;
 - 52.1.3. Penalty.

Article 53 Grace period for paying taxes

53.1. Where it becomes clear that a taxpayer is unable to pay tax debt due to one of the following circumstances, the respective tax administration may grant a grace period, extending the payment due date by up to one (1) year at the taxpayer's written request:

53.1.1. Affected by the disaster and flood, earthquake and fire referred to in Article

4.1.1 of the Law protection from the disasters 17;

- 53.1.2. The taxpayer has paid for medical expenses larger than the previous year's taxable income due to the reasons referred to in Articles 6.1.41.a and 6.1.41.b of this Law;
- 53.1.1.3. The taxpayer terminated his/her/its business activities;
- 53.1.1.4. The taxpayer's business activity suffered from substantial losses for three years in row and its solvency has deteriorated;
- 53.2. Where a taxpayer is unable to pay tax debt within the grace period prescribed in Article 53.1 of this Law due to a reasonable excuse, the relevant Tax administration may extend the grace period again based on a request of the taxpayer. The extension to be granted shall not exceed two (2) years, in total, including the initial grace period.
- 53.3. The following principles shall apply in granting a grace period for paying the tax debt: 53.3.1. For the tax debt covered by the grace period no collateral shall be required for the tax debt amounted to less than MNT 10 million, or the grace period is up to 3 months; and in other cases, the amount of the required collateral shall be not less than the amount including the due losses falling under the extended period.
 - 53.3.2. The items for collateral shall be the immovable property, treasury bills; and the activities on taking collateral shall be adhered to the Civil code, and the Law on Immovable Property¹⁸
 - 53.3.3. Instead of collateral stipulated in Article 53.3.1. of this Law the guaranties of other persons can be used.
 - 53.3.4. The taxpayer's written request shall specify the status of the assets or property, financial capability, and based on this such request shall include a schedule for tax debt payment during the grace period.
- 53.4. Activities on tax debt collection referred to in this Law shall not be implemented during the grace period where a grace period has been granted for paying tax debt.
- 53.5. In the case, where a grace period for payment of tax debts has been granted in accordance with Articles 53.1 and 53.2 of this Law, the amount of due losses calculated during the grace period shall be discounted by 20 (twenty) percent.
- 53.6. Where conditions occurred to consider the taxpayer as risky during the extension period as specified in Articles 53.1 and 53.2 of this Law, or the taxpayer failed to pay the tax debt according to the schedule, or did not allow changing the collateral; and the subsequent changes in the conditions have been considered as inappropriate for granting extension of the grace period, the head of the tax administration shall cancel the grace period and recover the tax debt from the collateral.
- 53.7. In the case, where a grace period has been cancelled in accordance with the Article 53.6. of this Law, the tax debts shall be recovered from the taxpayer's property and securities in the first instance; and where such assets are insufficient to pay the debt, the tax debt shall be recovered from the guarantor.

¹⁷ Law on Disaster Protection; "State Information", Edition No.07, 2017

¹⁸ Law on immovable property pledge; "State Information", Edition No.28, 2009

- 53.8. When recovering the tax debts from the guarantor, a letter of notification shall be sent as specified in Articles 58.1 and 58.2 of this Law. In the case, where a guarantor fails to settle the tax debt within the timeframe prescribed in such notification, a tax bill shall be issued according to the Article 51 of this Law. In the event of the guarantor's failure to pay the tax debt within the timeframe prescribed in the bill, the tax debt collection operations shall commence.
- 53.9. The tax debtor shall be notified on the decision of the head of the Tax administration regarding approval or cancellation of the grace period for tax debt payment within 10 business days.
- 53.10 The procedures on grace period for tax debt payment, the content and template of the forms related to these activities shall be approved by the state administrative body in charge of tax affairs.

Article 54 Early collection of risky tax debts

- 54.1. Where any of the following circumstances arises and it becomes clear that the taxpayer is not able to pay the tax debt, the tax administration shall collect the debt earlier where the tax liabilities have been determined:
 - 54.1.1. An enforcement activity referred to in Article 6.1.4 of this Law has started in relation to the taxpayer's assets;
 - 54.1.2. A decision has been made to put the taxpayer into liquidation;
 - 54.1.3. The taxpayer no longer has a residential address in Mongolia;
 - 54.1.4. It becomes obvious that the taxpayer evaded or attempted to evade tax payment through illegal actions, received or attempted to receive tax refunds, run away or attempted to run away from tax collection activities by transferring assets or property through fraudulent acts or intentionally going bankrupt.
- 54.2. A tax pre-claim shall be delivered for payment of tax debt within 3 (three) business days as stated in Article 54.1 of this Law.

CHAPTER ELEVEN TAX DEBT COLLECTION

Article 55 Tax debt collection

- 55.1. The Tax administration shall commence the operations on collecting tax debt in the following circumstances:
 - 55.1.1. The taxpayer or the secondary person obliged to pay taxes failed to pay the tax debt in full within the timeframe prescribed in the tax bill;
 - 55.1.2. The taxpayer failed to pay the tax debt in full within the timeframe prescribed in Article 53 of this Law and the tax pre-invoice referred to in Article 54.2 of this Law;
 - 55.1.3 The heir failed to pay the tax debt in full within the timeframe prescribed in the tax bill;
 - 55.1.4 The circumstances set forth in Article 54.1 of this Law occurred to the

taxpayer who received the invoice after the tax payment deadline

- 55.2 The Tax administration shall carry out debt collection operations in the following order of steps:
 - 55.2.1. delivering the tax bill to the taxpayer
 - 55.2.2. recovering the tax debt in an undisputed manner
 - 55.2.3. collecting the cash
 - 55.2.4. seizure of the assets and receivables
 - 55.2.5. sequestration of the seized assets
 - 55.2.6. monetizing the seized and sequestrated assets
 - 55.2.7. allocating the income
- 55.3. The operations stipulated in Article 55.2 of this Law may be carried out in overlapped manner in order to ensure full collection of tax debts.

Article 56 Principle of priority of taxes

- 56.1. The tax shall be recovered before any receivables other than those specified in Articles 56.2, 56.3, 56.4, 56.5, 56.6 and 56.7 of this Law.
- 56.2 In the case, where the enforcement measures referred to in Article 6.1.4 of this Law have been taken toward the taxpayer's assets, and the assets have been monetized, and where the Tax administration has requested recovery of the tax debts from such assets, the tax debts shall be collected after the expenses of such activities irrespective of the orders of debts registered with the court decision execution agency.
- 56.3 In the case, where the taxpayer's assets have been monetized according to the tax debt collection operations, the direct cost of collection of tax debt from such monetized assets shall be collected in the first instance, before taxes and other receivables irrespective of the provisions 55.4, 55.5.3, 55.6 and 55.7 of this Law.
- 56.4. In the case, where the items subject to excise tax and taxes on gasoline and diesel fuel have been monetized according to the enforcement activities, the excise taxes, the gasoline and diesel fuel taxes shall be recovered in first instance before other taxes and receivables, irrespective of the provisions 55.5-55.7 of this Law.
- 56.5. The tax debts of the taxpayer who have been registered with 2 (two) or more Tax administration offices whose assets are subject to seizure under the tax debt collection operations shall be collected according to the following principles:
 - 56.5.1. In the case, where the assets have been seized for the purpose of particular tax debt recovery, such tax debt shall be collected in first instance, before other tax debts that have been requested to be offset from the subjects of seizure;
 - 56.5.2 In the case, where there are several requests for offsetting the tax debts, such debt shall be collected according to the order of such requests made;
 - 56.5.3 In the case, where the taxpayer has been granted the grace period and put the collateral, the collateralized tax debt shall be collected first.
- 56.6 In the case, where the tax debt is to be recovered from the assets with the preferential security interest of the third party to demand the taxpayer's collateral or mortgage collateral, the tax debt shall be collected after such receivables.
- 56.7 In the case of a collateral that cannot be registered or the priority claim right although not registered, the preferential right prescribed in Article 56.6 of this Law shall be

exercised given it is proved by evidence to the authority realizing the enforcement operations.

- 56.8 In the case, where the person referred to in Article 56.7 of this Law failed to provide documentation or evidences of the preferential right, the preferential right cannot be exercised.
- 56.9 In the case of remedy for the damages caused to the life and health of others, such damages shall be compensated first, irrespective of what is specified in this Law, before taxes and receivables.

Article 57. Secondary persons with tax payment obligations

57.1. In the case, where it is determined that the taxpayer's assets are not sufficient to recover the tax debts and the taxpayer has transferred his/her/its assets to others at no charge or at too low price; or created a beneficial status to others by cancelling their receivables within the period of one year before the date of tax arrears, the successor shall be the secondary person with an obligation to pay taxes at the amount of the transferred asset and the amount of canceled receivable.

Article 58. General procedures on collection of tax arrears from the secondary person with tax payment obligations

58.1. The secondary person who has the obligation to pay the tax arrears of a taxpayer shall be delivered a notification with the following contents for the purposes of recovering tax arrears:

58.1.1. Full name of the taxpayer with tax arrears

58.1.2. Date of the tax debt, tax types, the amount of tax debt and the deadline to pay the tax debt

58.1.3. The place to pay the tax debt, account name and account number

- 58.2. The deadline to pay tax arrears specified in Article 58.1.2 of this Law shall be 20 days after delivery of the notification.
- 58.3. If the secondary person with tax payment obligation fails to pay the taxes within the time specified in 58.1.2 of this Law, the tax administration shall deliver a tax bill in the case except preliminary collection of taxes at risk.
- 58.4. Articles 53 and 54 of this Law shall equally apply to the secondary persons with tax payment obligations.
- 58.5. Unless the asset's value is likely to decline, collection of tax arrears from the assets of the secondary persons with tax payment obligations cannot be undertaken before commencement of monetizing the seized assets of the taxpayer.
- 58.6. In the case, where tax arrears of a taxpayer were recovered from the secondary person with tax paying obligations, he/she/it has a right to claim from the taxpayer with tax arrears.
- 58.7. The head of the state administrative body in charge of tax affairs shall approve the procedures on recovery of tax arrears from the secondary persons obligated to pay taxes

Article 59 Establishing a tax debtor's asset status

- 59.1. For the purposes of conducting the tax debt collection operations, a state tax inspector shall establish the status of the tax debtor's assets by using the following methods:
 - 59.1.1. To conduct inquiries regarding the status of the assets;
 - 59.1.2. To establish the status of the assets based on the data of the Integrated tax registration and information database;
 - 59.1.3. To conduct common operations of Tax administration specified in Section 5 of this Law;
 - 59.1.4. To establish the asset ownership, possessions and its use based on the thirdparty information and references.
- 59.2. Inquiries may be conducted in relation to the following persons in accordance with Article 59.1.1 of this Law, and check their asset-related documents as required:
 - 59.2.1. A tax debtor;
 - 59.2.2. A third party holding a tax debtor's assets, or a third party about whom there are reasonable grounds for believing that the assets are in his/her/its possession;
 - 59.2.3. A person that has a relationship with the tax debtor related to receivables or payables, or a person about whom there are reasonable grounds for believing that he/she/it has taken the tax debtor's assets;
 - 59.2.4. A legal entity in which a tax debtor has a share or equity participation.
- 59.3. When conducting common operations specified in Article 59.1.3 of this Law the procedures specified in Article 19.4 of this Law shall be complied with.
- 59.4. Information and references concerning the assets referred to in Article 59.1.4 of this Law shall be obtained from the state administrative body in charge of state registration and other relevant organizations.
- 59.5. The state tax inspectors, where it is required for tax debt collection, may inspect a tax debtor's place of residence and a location where an asset might be concealed.
- 59.6. A state tax inspector during inspection may require a tax debtor and a third party to open the doors, safes, or other warehouse and containers, and in the event the taxpayer refuses to do the actions, may take necessary measures to gain access to those.

Article 60. Procedures for property seizure

- 60.1. Seizure the assets of a taxpayer with tax arrears shall have a meaning that is stipulated in Article 49.1 of the Law on Court Decision Execution¹⁹ and the principle of seizure of assets with no security interest in first instance shall be applied.
- 60.2 In the case, where the assets with no security interest referred to in Article 60.1 of this Law are insufficient to recover the tax arrears, the assets with the security interest may be seized.
- 60.3 In the case, where the assets with the security interests of the third party have been seized, based on the request of the third party sent to the Tax administration, the tax debtor's seized assets can be exchanged for the assets that can cover the tax debt,

¹⁹ Law on Court Decision Execution; "State Information", Edition No.24, 2017

liquid assets or assets with no third-party security interest.

- 60.4 The Tax administration shall collect the tax arrears with the minimum cost, and seize the highly liquid assets in first instance for the purpose of tax debt collection.
- 60.5 No assets except for those required for tax debt collection shall be seized.
- 60.6 In the case, where it has been established that value of the assets to be seized is not sufficient to cover the aggregate amount of cost of seizure and the tax debt collection, amount to be paid to the third party that has a right over the collateral that is to be seized prior to the tax debt collection, such assets shall not be seized.
- 60.7 In the case, where the Tax administration has seized the tax debtor's assets, it shall issue an act on seizure. In the case, where the seized assets are movable property, securities, bank account, receivables, intangible assets over which there is a right to demand, the copy of the act and notification on seizure shall be delivered to the tax debtor.
- 60.8 In the case, where the taxpayer with tax arrears has fully paid the tax arrears or exercised the grace period stipulated in Article 53 of this Law, the Tax administration shall invalidate the assets seizure act.
- 60.9 The procedures on seizure, sequestration, maintaining and protection of assets and relations pertaining to these shall be approved by the Cabinet member in charge of finance and budget affairs based on the standards of what is specified in Articles 49, 50, 51, 52, 53, 54 and 56 of the Law on Court Decision Execution unless otherwise stipulated by the Law.

Note: "intangible assets over which there is a right to demand" means the investment in banks, non-bank financial institutions, savings and credit cooperatives, the orders to brokers and dealers on selling and purchasing shares.

Article 61 Assets and income that are prohibited for seizure

- 61.1 The seizure of the following assets shall be prohibited:
 - 61.1.1. Clothing and items to be used by the tax debtor and his/her family members on a daily basis;
 - 61.1.2. Only one home where the tax debtor permanently resides, as well as firewood and coal being used in the cold season by the tax debtor;
 - 61.1.3. Tools, materials, equipment, livestock and fodder for them that are necessary for activities which are the source of livelihood of the farmers, herders and handcrafts makers;
 - 61.1.4. Aids, allowances and donations provided due to disasters, natural hazards, accidents and emergency situations
 - 61.1.5 Pensions and benefits provided in accordance with the Law on Pensions and Benefits²⁰ provided from the Social Insurance Fund;
 - 61.1.6 donor compensation;
 - 61.1.7 Social welfare pensions and allowances, and the benefits from the social welfare services and social support services.

²⁰ Law on pensions and benefits granted from the Social Insurance Fund; "State Information", Edition No.08, 1994.

- 61.2. Easily perishable food products and old goods that have been worn out shall not be seized.
- 61.3. Where the movable property and securities of the tax debtor owned by a third party other than a family member or related person, and the third party refused to transfer these assets, such assets shall not be seized

Article 62 Seizure of movable properties and securities, sequestration of cash and recovery of tax arrears

- 64.1. When seizure the movable properties and securities, the state tax inspectors shall take such property under the Tax administration's possession. The seizure shall be effective once the Tax administration takes possession of the property.
- 62.2. In the case, where a state tax inspector identified cash while determining the status of assets of the tax debtor, cash of the amount not more than the tax debt shall be sequestrated and paid to the tax revenue account immediately. Tax debt of the amount paid shall be considered to have been collected.
- 62.3. In the case, where a state tax inspector seized the securities, the Tax administration may sell such securities and collect the tax debt from the proceeds. Tax debt of the amount of such proceeds shall be considered to have been collected.
- 62.4. In the case, where a tax debtor's assets are insufficient to recover the tax debts, the Tax administration shall sequestrate the movable property and securities that have been transferred to the third party for possession.
- 62.5 When carrying out the action referred to in Article 62.4 of this Law, the Tax administration shall obligate the third party in writing to transfer the asset within 5 (five) business days, and notify the tax debtor.
- 62.6 In the case, where the third party failed to transfer the assets in accordance with Article 62.5 of this Law, the state tax inspector may seize the movable property and securities.
- 62.7. In the case, where the third party specified in Article 62.4 of this Law has a lease right, or rent right free of charge, or a possession right based on a right to use the movable property or a right to generate profit or income under the contract concluded with the tax debtor, the third party may choose either to terminate the contract, or to continue using the movable property and generate profit or income without terminating the contract that shall be limited to three (3) months.
- 62.8. The Tax administration, when necessary, may have the seized movable property or securities stored by the tax debtor or the third party that has a right for possession of such property. In the case, where the depository irrespective of what is stated in Article 62.1 of this Law expressed that the assets have been seized by placing a seize, or informing the public on this or seized using other methods of establishing a seizure, the seizure shall be considered effective.
- 62.9. In the case, where the assets seized under Article 62.8 of this Law have been stored, and it is considered that there shall be no problem with debt collection, the use of such assets or generation of profit or income can be allowed.
- 62.10. The state tax inspector shall issue an act on seizure of the securities, and deliver it to the legal entity that is undertaking the trading, registration of the securities, payment

settlements, and storing them.

Note: "take under possession" means the action of the Tax administration on issuing a note on seizure of the tax debtor's asset without changing its ownership and possession, and with the limited rights to administer, possess, and right to use such asset.

Article 63 Recovery of the tax debt in an undisputed manner

- 63.1 The following procedures shall be adhered to in seizure of the taxpayer's bank account in an undisputed manner and recovery of tax arrears:
 - 63.1.1 The state tax inspector shall send a letter of notification approved by the head of the Tax administration to the liaison bank of the tax debtor on seizure the bank account in order to collect the tax debt from the tax debtor's monetary assets held with the bank;
 - 63.1.2 A letter of notification on seizure specified in Article 63.1.1 of this Law shall specify the tax debtor's name, the taxpayer identification number, the recipient bank's name and account number, the name of the tax debtor's liaising bank, address, grounds for tax debt collection, the amount of the tax debt and a demand to stop the debit transactions fully or in part;
 - 63.1.3 The bank that received a letter of notification on seizure shall transfer the tax debt payment in full or in part from the account referred to in the notification and from one or more accounts of the tax debtor
 - 63.1.4 In the case, where the monetary assets held with the bank are insufficient to cover the tax debt, the other expense transactions, except for the payments of payables from the tax debtor's account according to the court ruling shall be stopped in full or in part; and the bank shall transfer the tax debt from such account to the account specified in the letter of notification on seizure.

Article 64 Seizure of receivables and recovery of tax arrears

- 64.1. The seizure of the receivables shall be implemented by delivery of the letter of notification on seizure to the third party with the payables to the tax debtor. The seizure of the receivables shall commence with delivery of the letter of notification on seizure of the receivables to the third party.
- 64.2 Although the seizure shall be for the total amount of receivables, where the tax debt is less that the amount of receivables a partial seizure can take place.
- 64.3 The seizure of the permanent income similar to wages and salary shall continue until the tax debt is fully collected from the future income after seizure has taken place.
- 64.4 The state tax inspector while seizure the receivables can confiscate the relevant documents as necessary.
- 64.5 The state tax inspector shall have a right to recover the tax debt from the seized receivables.
- 64.6 The following procedures shall apply to seizure of salary and wages (including employment income similar to salary, wages, awards and rewards):64.6.1. The state tax inspector, for the purpose of recovery of tax debt from the tax

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debtor's salary and wages, shall deliver the letter of notification on seizure to the individuals and legal entities that have an obligation to pay such income;

- 64.6.2. The letter of notification on seizure shall specify the tax debtor's name, address, the recipient bank's name and account number, the name and address of private individuals and legal entities that pays salary and wages to the taxpayer, the amount of tax debts, payment schedule and the date of delivery of the letter of notification on seizure, respectively.
- 64.6.3. The private individuals and the legal entities, upon receiving the letter of notification of seizure, are to withhold the tax arrears in accordance with the schedule of payment and transfer it to the account specified in the letter of notification within three (3) business days after the withholding;
- 64.6.4. To transfer the tax debt payments before other receivables including those to be paid under the court ruling;
- 64.6.5. In the case, where the tax debtor has been dismissed or released from work, the legal entity shall send the information on the amounts withheld toward the tax debt payments and the tax debtor's movements to the Tax administration within seven (7) business days of the dismissal or release;
- 64.6.6. When collecting the tax debt from a tax debtor's wages or salary, the Article 63.2 of the Law on Labor ²¹ shall be complied with.
- 64.7 During the period of seizure, it shall be prohibited for the tax debtor to make amendments to or terminate contracts entered with a third party.

Article 65 Seizure of the immovable properties, aircrafts, road vehicles and construction equipment and recovery of tax arrears

- 65.1. The seizure of immovable properties, its validity term, the relations arising from use of seized property and generation of profit and income from such seized properties shall be implemented as follows:
 - 65.1.1 In seizure the immovable properties a letter of notification shall be delivered to the tax debtor and the seizure shall commence with the delivery of the letter of notification to the tax debtor.
 - 65.1.2 The Tax administration shall register the seized immovable property with the registration authority and where the registration has taken place before delivery of the letter of notification, the seizure shall commence with such registration irrespective of what is specified in Article 65.1.10f this Law.
 - 65.1.3 In the case, where it becomes clear that the taxpayer despite the opportunities of use and generate profit and income from the immovable property intends to undertake the action that might lead to a sharp fall of a value of such immovable property, the Tax administration may restrict the use and generation of profit and income from the immovable property. This provision shall equally apply to the third party that has a right to use and generate profit and income from the immovable property.
- 65.2 The seizure of the aircrafts, its validity term, and temporary break in use of aircrafts

²¹ Law on labor, "State Information", Edition No.25, 1999

shall be implemented as follows:

- 65.2.1 When seizure the aircraft, the provisions 65.1.1 and 65.1.2 of this Law shall be adhered to;
- 65.2.2 The use of aircrafts except for those that are ready for flights shall be temporarily stopped upon the Tax administration's decision.
- 65.2.3 When collecting the tax debts, the measures on safeguarding and storage of the seized aircrafts shall be taken as required.
- 65.2.4 In the case, where the measures referred to in Article 64.2.3 of this Law have been taken before delivery of the letter of notification on seizure, the operation on seizure shall commence during the undertaking of such measures.
- 65.2.5 In the case, where there are reasonable excuses, the seized aircrafts, or those aircrafts the use of which have been stopped as specified in Article 65.2.2 of this Law may be allowed to operate according to the decision of the head of the Tax administration.
- 65.3 The operation on seizure of the road vehicles and construction equipment, its validity term, and temporary break in use of aircrafts shall be implemented as follows:
 - 65.3.1 When seizure the road vehicles and construction equipment registered with the state registration, the Articles 65.1.1, 65.1.2 of this Law shall be adhered to;
 - 65.3.2 When seizure the road vehicles and construction equipment, the Articles 65.2.3 and 65.2.4 of this Law shall be adhered to;
 - 65.3.3 The seizure of the road vehicles and construction equipment shall be undertaken according to the Tax administration's decision, and in this case the tax debtor can transfer such assets to the Tax administration's possession;
 - 65.3.4 In the case, where the road vehicles and construction equipment have been transferred to the Tax administration's possession as specified in Article 65.3.3 of this Law, the provisions referred to in Article 62.1, 62.4, 62.5, 62.6, 62.7 and 62.8-д of this Law shall be adhered to;
 - 65.3.5 The Tax administration may have the tax debtor and the third party store the road vehicles and construction equipment transferred to the possession of the Tax administration in accordance with the Article 65.3.3 of this Law and in this case the Tax administration shall make it clear that such road vehicles and construction equipment are under its possession by placing a seal on them and other methods to inform the public on it.
 - 65.3.6 Where there is a reasonable excuse, the Tax administration may allow the use of the road vehicles and construction equipment transferred to its possession in accordance with Articles 65.3.3 and 65.3.5 of this Law or those that have been stored.

Note: "safeguarding and storage of the aircrafts" means the placing such aircrafts ensuring they cannot undertake any flights, or confiscation of the documents on registration of the aircrafts or other documents required for performing flights.

Article 66 Seizure of the intangible assets

66.1 The seizure of the intangible assets that are not in use by the third party shall be implemented as follows:

- 66.1.1 When seizure the patent rights, copyrights and other assets that are in not in use by the third parties, the letter of notification shall be delivered to the tax debtor, and the operation on seizure shall commence with the delivery of such letter of notification to the tax debtor;
- 66.1.2 In the case, where of seizure of the assets that require registration for transferring the rights over, such assets based on the decision of the head of the Tax administration shall register be registered with the relevant authority.
- 66.1.3 In the case, where the conditions stipulated in Article 54 of this Law occur, the seizure shall enter into effect as the seizure operations referred to in Article 66.1.2 of this Law is registered irrespective of what is specified in Article 66.1.1 of this Law.
- 66.1.4 The seizure of the assets for assets, for which a registration of the restriction of the rights for administering such assets is required, shall commence upon the registration irrespective of what is specified in Articles 66.1.1 and 66.1.3 of this Law.
- 66.2 In the case, where the intangible assets are in use by the third parties, the operation on seizure shall be undertaken as follows:
 - 66.2.1 In seizure the printing rights, shares and other assets that are in use by the third party a letter of notification shall be delivered to such third party and seizure shall commence with delivery of the letter of notification to the third party;
 - 66.2.2 In the case, where the seizure of the assets referred to in Article 66.2.1 of this Law requires registrations in order to transfer such assets, the Articles 66.1.2 and 66.1.3 of this Law shall apply.

Article 67 Requesting to withhold payments with the purpose of tax debt collection

- 67.1 In the case, where the monetization of the taxpayer's assets as part of the enforcement operations has been commenced, the Tax administration shall deliver a request to withholding the tax debt to the body that performs such operation. Once the request for withholding is delivered, the Tax administration shall notify the taxpayer and the pledgee on it.
- 67.2 In the case, where it is established that for the collection of the tax debts, the taxpayer owns or possesses other assets that can be easily monetized and/or those that are not affecting the rights of the third party, and that it is possible to collect the tax debt from such assets, the Tax administration shall not submit the request on withholding.

Article 68 Operations on monetizing the seized assets

- 68.1 Where the taxpayer filed a complaint over the re-assessment report, monetizing of the seized asset of the taxpayer other than those specified in Article 63 of this Law shall not be commenced until the final decision is issued
- 68.2. Tax Administration shall collect the tax arrears created due to non-payment of taxable income within the time specified by the law, the re-assessment that has not been complained over within the period specified in the law or the tax debt subject to payment according to the resolution of the Dispute Resolution Council and the Court on complaint over re-assessment, from seized asset or the pledge item specified in

Articles 53.6, 53.7 and 53.8 of this Law through auctions organized in accordance with the relevant provisions of the Civil Code and the procedures of the Law on Execution of Court Decisions or through monetizing the assets by direct contracting under the procedures of this Law

- 68.3. The Tax administration shall set the auction price of the assets specified in Article 68.2 of this Law according to the procedures of the Law on Court Decision Execution.
- 68.4 The taxpayer and the state tax inspector or the tax administration employee shall not be authorized to directly or indirectly buy the asset to be monetized.
- 68.5 The monetization through a direct contract shall be undertaken in the following circumstances:
 - 68.5.1. The asset is unsuitable for auctioning, or it is perishable;
 - 68.5.2. It is fully possible to sell the asset at the market price quoted on the same day;
 - 68.5.3. There were no participants in the auction, or the offered purchase price was less than the initial price, or the buyer has cancelled the decision to purchase due to the failure to make the payment by the due date although the auction was organized twice.
- 68.6 In the case, where the proceeds from the sale of the property through the auction or direct contract have been insufficient to settle the tax debt, the taxpayer shall not be relieved from the obligation to pay the balance of the tax debt.
- 68.7 The general procedures on monetizing the assets through organizing auctions and direct contracts shall be approved by the Cabinet member in charge of finance and budget affairs.

Article 69 Allocation of the proceeds from monetization

- 69.1. The following principles shall be adhered to in allocation of the proceeds from monetization:
 - 69.1.1 The amount of proceeds from the sale of the seized assets and the monetary assets received from the third party as a result of seizure the securities, receivables or the intangible assets (hereinafter referred to as "the transferred monetary assets"), shall be allocated by the Tax administration to the seized taxes, the taxes for which the request for withholding was issued, collaterals related to the seized assets, rights over mortgage and according to the preferential rights for priority over the pledged receivables;
 - 69.1.2 The seized monetary assets and the monetary assets received under the requests for withholding shall be transferred to the taxes related to such seizure or requests for withholding respectively.
 - 69.1.3 Any funds remaining after the allocation of the proceeds referred to in Articles 69.1.1 and 69.1.2 of this Law, shall be returned to the tax debtor.
 - 69.1.4 In the case, where the transferred monetary assets are insufficient to cover the aggregate amount of taxes and other receivables referred to in Article 69.1.1 of this Law, the principle of priority of taxes as specified in this Law, the sequence and amounts stipulated in the Civil code and other laws shall be adhered to in allocation of available funds;
 - 69.1.5. The proceeds referred to in the Article 69.1.1 or 69.1.2 of this Law shall be

allocated to taxes, due losses and penalties according to the sequence of tax debt collection stipulated in this Law.

- 69.2. The Tax administration shall review the requests from the persons with receivables as follows:
 - 69.2.1 The persons with receivables referred to in Article 69.1.1 of this Law shall deliver the request to the Tax administration before the decision on sale of the assets is made;
 - 69.2.2 The Tax administration shall receive and review the request for receivables referred to in Article 69.2.1 of this Law and where the persons with the registered rights over the pledged receivables and over the mortgage loans, as well as preferential rights for priority; and with the preferential rights for priority over the un-registerable collateral and unregistered ones that are known, have not submitted requests, the head of the Tax administration shall determine the amount of such receivables;
 - 69.2.3 In the case of the receivables pledged through securitization of the seized assets, the mortgage lending rights, and preferential priority rights for the seized assets referred to in Article 69.1.1 of this Law, the proceeds shall not be allocated to the persons with receivables where the persons with the receivables other than those referred to in Article 69.2.2 of this Law failed to submit a request related to the amount of the receivables before the decision to sell is made.
- 69.3 The issuance of the act on calculation of the allocations, and return of the transferred monetary assets shall be undertaken as follows:
 - 69.3.1 When the Tax administration makes the allocations as specified in Article 69.1 of this Law, it shall issue an act reflecting the receivables to be allocated in accordance with the legislation, the amount determined by the tax administration as provided in Article 69.2.2 of this Law, the timing of transferring the monetary assets referred to in Article 69.3.2 of this Law and other required information; and shall send the copy of the act on calculation of allocations within 3 (three) days after transferring the monetary assets to the persons that submitted the requests on receivables, to the persons with the receivables that have been determined according to the provisions 69.2.2 of this Law, and tax debtor.
 - 69.3.2 The timing of the return of the transferred assets to the persons shall be considered as a following day after 7 (seven) business days of delivery of the copy of the act on calculation of allocations.
 - 69.3.3 The Tax administration shall return the transferred monetary assets based on the timing of the act on calculation of allocations.
 - 69.3.4. The complaint regarding the act on calculation of allocations shall be filed before the return of the transferred monetary assets takes place.

Article 70 Transfer of the operations on tax debt collection

70.1. In the case, where the assets to be seized and the assets seized by the Tax administration are located outside of the jurisdiction of the particular tax

administration, the tax debt recovery operations can be transferred to the relevant tax administration where the assets are located.

- 70.2. When the Tax administration is monetizing the seized assets the operations on tax debt recovery may be transferred to other tax administrations as required.
- 70.3 In the case, where the operations have been transferred as specified in Articles 70.1 and 70.2 of this Law, the Tax administration that transferred such operation shall notify the tax debtor to that effect.

Article 71 Implementation of measures on restriction or suspension of the rights as specified in other legislation

- 71.1. Before conducting the operations on tax debt collection as stipulated in this Law, the Tax administration may take measures to notify the taxpayer as a warning to him/her/it on restriction of the movements of the transport means, depending on the amount of tax debt.
- 71.2. In the case, where the following circumstances occur at the same time the Tax administration, shall have a right to request the authorize state organizations for banning the border crossings of the tax debtors that are foreign citizens or the stateless individuals until they pay the tax debts in full:

71.2.1 The tax debtor has neither assets nor receivables to cover his/her/its tax debts;

71.2.2 The amount of the tax debts is equal to MNT 20 mln or more.

71.3 The procedures on implementation of the measures specified in Article 71.1 of this Law shall be approved jointly by the Cabinet members in charge of finance and budget affairs, and the legal affairs respectively.

Article 72 Monetary assets unreasonably and excessively charged by the Tax administration

- 72.1. The taxes, penalties and due losses to be returned in full or in part due to invalidated or altered tax re-assessment reports shall be validated with the act on tax refund
- 72.2 The overpaid taxes shall be refunded within thirty (30) business days after its validation with the act stipulated in Article 72.1 of this Law.
- 72.3 The monetary assets referred to in Article 72.1 of this Law may be resolved in accordance with the procedures set out in Articles 49.1.2 and 49.1.3 of this Law if the taxpayer agrees, and this shall not serve as a ground for not charging due losses on the overpaid amount under the Article 73 of this Law.
- 72.4 In the case, where the taxpayer does not agree with the amount of refund specified in Article 72.1 of this Law, the taxpayer may file a complaint to the dispute resolution council within 30 (thirty) days after being handed over the act on refund.

Article 73 Due losses

73.1. The due losses shall be imposed on taxes not paid by the taxpayers within the timeframe prescribed by the law, or on taxes unreasonably and excessively collected by the Tax administration, respectively; and the Cabinet member in charge of finance and budget affairs shall establish the amount of due losses to be charged for the particular year within January of the particular tax year based on the following

principles:

- 73.1.1. The amount of due losses to be charged on taxes not paid by the taxpayers on time shall to be twenty (20) percent more than the weighted annual average interest rate of the commercial banks loans as quoted by the Bank of Mongolia;
- 73.1.2. The amount of due losses to be charged on taxes unreasonably and excessively collected by the Tax administration shall be the weighted annual average interest rate of the commercial banks loans as quoted by the Bank of Mongolia.
- 73.2. The time period for charging due losses shall be determined as follows:
 - 73.2.1. By the number of days, starting from the due date of the tax payment as specified in the tax legislation until the day the tax is paid; and
 - 73.2.2. By the number of days, starting from the day the monetary assets referred to in Article 73.1 of this Law have been collected by the Tax administration unreasonably and excessively, until the day when the decision to refund them was made.
- 73.3. The due losses shall not be charged on the tax due losses and penalties.

CHAPTER THIRTEEN SYSTEM OF THE TAX ADMINISTRATION OF MONGOLIA

Article 74 The Tax administration of Mongolia

- 74.1. The state administrative body in charge of tax affairs shall be the state administrative body with the functions on implementation of the tax legislation nationwide.
- 74.2. The Tax administration of Mongolia, shall comprise of the state administrative body in charge of tax affairs, the aimag, capital city, districts and soums tax departments, divisions and units, as well as the state tax inspectors and tax collectors.
- 74.3. The state administrative body in charge of tax affairs may have the subsidiary units in charge of relations with the large taxpayers, press and media, information technology, training and tax services.
- 74.4. The Tax administration shall conduct internal audits for the purpose of assessing and evaluating its activities, and overseeing the implementation of the tax and other legislation.
- 74.5 The Tax administration shall have a logo or emblem; its design and procedures for its use shall be approved by the head of the state administrative body in charge of tax affairs.

Article 75 Functions of the Tax administration

- 75.1. The Tax administration shall perform the following primary functions:
 - 75.1.1. To organize the activities on ensuring tax compliance, provide the taxpayers with the information and advice, and organize training and public awareness activities;
 - 75.1.2. To oversee the implementation of the tax legislation;

75.1.3. To generate the budget revenue.

- 75.2 The Tax administration shall respect the legitimate rights and interests of the taxpayers, and provide them with information and assistance with respect to assessment, payment and reporting of taxes in accordance with the legislation.
- 75.3 The lower level tax administration shall have an obligation to implement the guidelines and guidance delivered to the taxpayers in accordance with the Article 76 of this Law, and can obtain the appropriate clarifications regarding the implementation of such guidelines and guidance from the person who has issued such guidelines and guidance as required.
- 75.4 The taxpayers shall a right to obtain assistance and advices from the tax practitioners allowed by the Law, with regard to performing their duties imposed by the legislation and excercising their rights.
- 75.5 The relations arising from rendering the services by the tax practitioners shall be regulated by the Law on tax practitioners' services²².
- 75.6 The Tax administration for the purposes of the public awareness of the tax legislation shall organize the training on the tax legislation, guidelines and methodologies.
- 75.7 The Tax administration shall place on its webpage the tax legislation, organize the public awareness activities and provide with information and articles through media.
- 75.8 The Tax administration shall organize the activities on improvement of the public tax education, and cooperate with the relevant organizations in this regard.

Article 76 Operational principles, rights and duties of the Tax Administration, and prohibitions

- 76.1. The Tax Administration shall adhere to the following principles in its operations:76.1.1. Rule of law;
 - 76.1.2. Not be influenced by others;
 - 76.1.3. Respect the rights and legitimate interests of the taxpayers, enabling them to exercise their rights, and render trust in them;
 - 76.1.4. The lower level organizations to be under the direct subordination to higher level organizations.
- 76.2. Individuals, legal entities and the officials shall be prohibited from showing pressure to the Tax administration and the state the tax inspectors by interfering in exercising of their full powers specified in the legislation.
- 76.3. The Tax administration and the state the tax inspectors shall file a complaint with the relevant organizations against the person violating the provision 76.2 of this Law, appeal to the court for recovery of damages occurred.
- 76.4. Any person shall be prohibited from making decisions that fall under the full powers of the Tax administration and the state the tax inspectors in cases other than those stipulated in the legislation.
- 76.5. Any person shall be prohibited from assuming duties for others on matters pertaining to the tax assessment, tax credits and tax exemptions in cases other than those stipulated in the legislation.

²² Law on Tax Practitioners' Services; "State Information", Edition No. 03, 2013

- 76.6. The Tax administration when exercising its full powers shall operate without being influenced by others and shall strictly adhere to the Laws and the legal documents adopted in conformity with them and where the Tax Authority fails to perform its duties, the taxpayers shall be entitled to demand it to perform its obligations imposed by the Law.
- 76.7. The Tax administration and the state tax inspectors, while exercising their full powers, shall adhere to the code of ethics applicable to them, and respect the rights and legitimate interests of taxpayers, and render trust in them.
- The Tax administration and the state tax inspectors and the collectors shall not 76.8. interfere in the activities of taxpayers for any matter, except for those pertaining to the audit of tax assessment, and the payment status, determining the tax liability, and overseeing the payments of taxes and tax collection as specified by Law.
- 76.9. The state tax inspectors and the collectors are prohibited from contacting the taxpayers for personal reasons, and providing advice in any form, assisting in maintaining the accounting records, producing tax returns, conducting audits, or to assist with or demand tax evasion.

Article 77 Management of the Tax administration and its full powers

- 77.1. The Tax administration shall be managed in a unified and centralized manner.
- The state administrative body in charge of tax affairs shall work under supervision of 77.2. the central state administrative body in charge of finance and budget affairs; the aimag, capital city tax departments and divisions shall be work under the state administrative body in charge of tax affairs; and the districts tax divisions, and the soums tax divisions and units as well as the state tax inspectors and collectors shall work under the aimag, capital city tax departments and divisions, respectively.
- 77.3. The state administrative body in charge of tax affairs shall provide with the professional, methodological management, and funds for the operations of the Tax administration of all levels, and oversee their operations.
- 77.4. The head of the state administrative body in charge of tax affairs shall be appointed and released by the Government of Mongolia based in accordance with the Article 182.2 of the Law on Government of Mongolia²³.
- 77.5. The heads of the aimag, capital city, and district tax departments and divisions shall be appointed and released by the head of the state administrative body in charge of tax affairs, upon the consultation with the governor of the relevant level.
- 77.6. The heads of the aimag, capital city and district tax departments and divisions shall be appointed through a competitive selection in accordance with the Law on civil service²⁴ from the citizens with the financial, economic or accounting qualifications.
- The head of the state administrative body in charge of tax affairs shall be the general 77.7 state tax inspector and shall exercise the following full powers in addition to the powers specified in Article 8.3 of the Law on Legal Status of Government Agencies

²³ Law on the Government of Mongolia; "State Information", Edition No.03, 1993
²⁴ Law on Public Service; "State Information", Edition No.01, 2018.

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- 77.7.1. To provide with the organizational management and funds to enable implementation of the full powers of the Tax administration and the state tax inspectors, and to organize the activities for overseeing their activities;
- 77.7.2. To organize the activities on implementation and enforcement of the tax legislation on the entire territory of Mongolia
- 77.7.3. To issue orders, approve and enforce the procedures, guidelines, methodologies, acts, design of the forms/templates to be commonly adhered to, within the scope of the powers granted by this Law and other tax legislation, and issue recommendations;
- 77.7.4. To grant, remove, invalidate or suspend the rights of the state tax inspectors;
- 77.7.5. To participate in drafting the tax legislation, and develop proposals on methods, forms and possible ways of their enforcement by the Tax administration, and submit them to the central state administrative body in charge of finance and budget affairs;
- 77.7.6. To make proposals on the drafts of the international treaties for the avoidance of double taxation on income and assets, and the international agreements on prevention from tax evasion, and submit to the central state administrative body in charge of finance and budget affairs;
- 77.7.7. To review decisions issued by the Tax administration and the state tax inspectors within the scope of the law, and modify or invalidate them where it is considered to be groundless;
- 77.7.8. To appoint, release, transfer, exchange the employees of the Tax administration, and grant awards and incentives, or impose disciplinary sanctions to them;
- 77.7.9. To appoint and release the employees of the state administrative body in charge of tax affairs and the tax departments of aimags, the capital city and districts
- 77.7.10. To implement the Tax administration's internal audits;
- 77.7.11. To organize training for preparing the tax practitioners and granting the rights to them, jointly with authorized bodies, as provide for in the legislation;
- 77.7.12. To organize training for qualifying the state tax inspectors, and granting them the rights of the state tax inspectors;
- 77.7.13. To administer the budget and funds of the Tax administration;
- 77.7.14 To represent the Tax administration abroad and domestically, and at the courts and arbitrages;
- 77.7.15. To develop and approve the code of ethics for tax administration employees.
- 77.8 Tax employee in the soum shall be appointed and released by the head of the tax department of the particular aimag in consultation with the Governor of respective level and he/she shall have a right to impose a disciplinary sanction to the employee.

²⁵ Law on Legal Status of Government Agencies; "State Information" Edition No. 16, 2004

- 77.9. The head of the state administrative body in charge of tax affairs and at the same the general state tax inspector may delegate some of his/her full powers specified in Article 77.7 of this Law, except for those stipulated in Articles 77.7.3, 77.7.4, 77.7.8, 77.7.13 and 77.7.15 of this Law to the management of the aimag, capital city and districts tax departments by issuing a Decree.
- 77.10. In the absence of the head of the state administrative body in charge of tax affairs, the deputy head shall act for him.

Article 78 Guidance on tax compliance

- 78.1. The head of the state administrative body in charge of tax affairs my issue the following guidance under his/her full powers prescribed in Article 77.7.3 of this Law that has to be complied by the tax administration in its operations:
 - 78.1.1. Guidance on implementation of the tax legislation based on the taxpayer's request or upon initiative of the tax administration;
 - 78.1.2. Guidance on application of the rulings finalized by the Dispute Resolution Council or the Court at the national level.
- 78.2. The tax administration shall maintain an electronic database of publicly open tax guidance containing information other than those related to confidentiality of the taxpayer, state or other persons. A guidance shall be published on the electronic database within 10 days after its issuance.
- 78.3. The General State Tax Inspector may refuse to accept the request specified in Article 78.1.1 of this Law in the following circumstances:
 - 78.3.1. where the taxpayer is undergoing a tax audit or notified of an outstanding tax audit;
 - 78.3.2. where the tax administration has previously issued a guidance on the issue reflected in the request;
 - 78.3.3. where the request is on an issue that is not related to the functions and mandate of the tax administration;
 - 78.3.4. where the taxpayer filed a complaint on the issue to the Dispute Resolution Council or the Court; or the case related to the taxpayer is under an investigation of a law enforcement agency;
 - 78.3.5. where the request reflects an issue aiming towards tax avoidance or tax evasion;
 - 78.3.6. where the request reflects relations pertaining to an investment agreement, product sharing agreement or stabilization agreement;
 - 78.3.7. where the request reflects relations pertaining to identification of the related parties, transfer pricing adjustments and transfer pricing reports;
 - 78.3.8. where it does not meet the requirements set in conformity with the procedures stipulated in Article 78.7 of this Law.
- 78.4. In the case, where the guidance does not conform with the law or does not meet the requirements set in this Law, the General State Tax Inspector and the Cabinet member in charge of finance and budget affairs may fully or partially abolish the guidance.
- 78.5. In the case, where an amendment was made to the tax legislation on the issue ruled by

the guidance, the guidance shall be deemed invalid from the date of enactment of the legislation amendment.

- 78.6. The guidance shall not be used as basis for validation of specific transactions of the taxpayer, amounts reflected in the tax returns or tax assessment.
- 78.7. Requirements for issuance of the guidance reflected in this Section, the Form of the request, the form of the guidance and the procedures on abolishment and publication of the guidance shall be approved by the member of the Cabinet in charge of finance and budget affairs.

Article 79 Documents to be issued by the Tax administration and the state tax inspectors

- 79.1. The Tax administration when exercising its full powers in relation to the tax collection, overseeing and conducting tax audits shall produce and validate its decisions by issuing notifications, demand letters, an act on seizure an asset, cards on seizure, the tax re-assessment reports, value added tax assessment an payment validation report, the report cards, notes, tax refund report, tax invoices/bills and pre-invoices, letters of notification, demand letters, requests for withholding, report on calculation of allocations, notices on summonses, notifications on seizure an asset, as well as recommendations and other documents that shall be produced by the Tax administration.
- 79.2. The documents referred to in Article 79.1 of this Law shall include the name and signature of the relevant official issuing it, and the decision made, the grounds for such decision, the deadline to comply with it, as well as the date of delivery of such documents.
- 79.3. Documents referred to in Article 79.1 of this Law shall be considered delivered to a taxpayer upon physical delivery, or delivery by mail to their residential or work address, or upon electronic sending; and the residential address of a taxpayer shall be defined by the most recent address registered with the relevant registration body.
- 79.4. The documents referred to in Article 79.1 above shall be produced based on the following grounds and procedures:
 - 79.4.1. When summoning the taxpayers and other persons, a notification shall be issued that shall include the names and signatures of the taxpayer and the state tax inspector; the time for arrival at the tax administration, and the dates of issuance and delivery of such notification;
 - 79.4.2. For the purpose of eliminating causes and conditions that have led to the violation of the tax legislation, the notice of demand shall be issued and signed by the head of the relevant audit unit and the state tax inspector that has conducted the audit; and such notice shall include notes regarding the violation, the deadline for elimination of causes and conditions that have led to the violation and for providing a response, as well as the reference number and a date of issuance of such notice;
 - 79.4.3. For the tax re-assessment and imposing a sanction on the taxpayer in accordance with the legislation, calculating and charging the due losses, the tax re-assessment report shall be issued, signed by the head of the relevant

unit and the state tax inspector that have conducted the audit; and such report shall include notes regarding the violation, the grounds of the decision, and the reference number and a date of issuance of the confirmation;

- 79.4.4. In the case, where it is established during the tax audit that the tax legislation has not been violated, a report card shall be produced and signed by the head of the relevant unit and the state tax inspector that has conducted the audit as well as the taxpayer, and reflect the reference number and a date of issuance;
- 79.4.5. When the Tax administration is conducting inspection of premises and warehouses, and undertaking the inventory audits and review of the workload and usage of business time, seizure the assets, conducting interviews and delivery of the tax re-assessment report within the scope of its full powers, it shall produce notes clearly specifying the date of issuance of the note, and the address of the taxpayer, signed by the head of the relevant unit and the state tax inspector that has conducted the audit, and signed by the people who were present when producing the note as required
- 79.4.6. The tax refund report shall be issued for returning to the taxpayer the taxes unreasonably and excessively collected by the Tax administration as well as the due losses; and such report shall be signed by the tax inspector who calculated the amount of refund. The refund report shall include the date of calculation of the amount of taxes and due losses to be returned, the amount of due losses, the overpaid amount and due losses;
- 79.4.7. The Tax administration shall issue a tax invoice/bill and the pre-invoice to recover tax debts; a letter of notification to recover the tax debts from the secondary persons with tax payment obligation; and notification on seizure of an asset to recover the tax debts in an undisputable manner and from the receivables; and all such documents shall specify the amount of the tax debts, the deadline for payment, the beneficiary bank account to pay the tax debt, and the taxpayer's liaising bank and the account number, the name and address of the taxpayer as well as the individual or legal entity that shall pay tax debts on the taxpayer's behalf, the name and signature of the state tax inspector, and the dates of issuance and delivery of these documents;
- 79.4.8. The Tax administration shall issue a demand letter for the enforcement of the provisions of the Article 30 of this Law, specifying in it the reason and circumstances that have led to issuing the demand letter, the name and signature of the taxpayer or his/her/its authorized representative as well as the state tax inspector issuing the demand letter, and the date of issuance and delivery;
- 79.4.9. When recovering a tax debt from the taxpayer's assets the report on seizure and the seizure card shall be produced. The report on seizure and the seizure card shall reflect the tax reporting period related to the tax debt, the type of tax, the tax payment due date and the amount, the name, type, characteristics and location of the seized assets, and the name and address of the tax debtor;
- 79.4.10 During the enforcement activities the tax administration shall send a request for withholding to the organization that commenced the monetization of the

tax debtor's assets. A request for withholding shall specify the name and address of the tax debtor, the tax reporting period for tax withholding, the type of tax, the tax payment due date according to the Law and the amount, the name, type, characteristics and location of the seized/seized assets for which the operations on the monetization have been commenced.

- 79.4.11. For the allocation of the proceeds from the monetization of the assets with the purpose of tax debt recovery a report on calculation of allocation shall be produced; and such act shall reflect the name and address of the tax debtor, the total amount of monetary assets to be allocated, the amount of taxes related to the seizure, the sequence of the allocations, the amount to be allocated, the name and address of the request for receivables, the sequence of the allocations, the amount to be allocated and the timing when the money is to be returned;
- 79.4.12 The recommendations shall be issued for a taxpayer who has violated the tax legislation, with a view to preventing future violations, and the advice on working in compliance with the legislation; and such recommendation shall specify the taxpayer's name and address, the state tax inspector's name and the date of delivery;
- 79.4.13. A summons note shall be produces and issued for the purpose of obtaining verification, copies of the documents, the bank statements and other proofs similar to them that are required for the tax audit, from the entities, private individuals and financial institutions that liaise with the taxpayer, and sent to the taxpayer; and such summon shall specify the taxpayer's name and address, the state tax inspector's name, and the date of delivery.
- 79.5. The head of the state administrative body in charge of tax affairs shall approve the templates for the documents to be issued by the state tax inspectors.
- 79.6. The documents stipulated in Article 79.4 of this Law shall be used together with a unique, unified number in accordance with the approved templates, and shall be mandatory registered with the integrated tax registration and information database.
- 79.7. The Tax administration and the state tax inspectors shall not print and use designated letterheads and forms/templates of the documents stipulated in this Article without permission, or use invalid or fraudulent letterheads, or use them for anything other than the intended purposes.
- 79.8. The taxpayers shall be obliged to adhere to the decisions as provided is this Article.

Article 80 Guarantees for state tax inspectors' rights

- 80.1. The salaries and wages of state tax inspectors shall comprise of the salary stipulated in the Article 57.2.1. of the Law on Public Service, performance bonuses and other salary additions specified in the legislation.
- 80.2. The procedures on the awarding the performance bonus to State Tax Inspectors shall be approved the Cabinet member in charge of finance and budget affairs in compliance with the Budget Law²⁶.

²⁶ Integrated Budget Law, "State Information", Edition No.03, 2012.

- 80.3. The following titles may be granted to the state tax inspectors:
 80.3.1. Honorary tax adviser
 80.3.2. Accredited tax adviser
 80.3.3. Tax adviser.
- 80.4. The State Tax Inspectors shall be provided with the required uniform and equipment necessary for performing their official duties.
- 80.5. The procedures on use of uniform and equipment by the state tax inspectors, and awarding of ranks and titles, and respective salary additions shall be approved by the Cabinet member in charge of finance and budget affairs.

CHAPTER FOURTEEN MISCELLANEOUS PROVISIONS

Article 81 Review and resolution of taxpayer complaints

- 81.1. The taxpayers shall be entitled to file complaints under the administrative procedures with regard to the decisions made by the Tax administration and the state tax inspectors, except for the proceedings on examination and resolution of violations by the Tax administration and the state tax inspectors, in accordance with the jurisdictions as follows:
 - 81.1.1. Complaints concerning the decisions of a state tax inspector, except for the tax re-assessment report, shall be filed to the head of the relevant tax administration directly supervising his/her;
 - 81.1.2. Complaints concerning the decisions of the tax administration shall be filed to the head of its higher-level tax administration;
 - 81.1.3. Complaints concerning the tax re-assessment report issued by the state tax inspector shall be filed to the dispute resolution council in accordance with the relevant jurisdiction; and
 - 81.1.4. Complaints concerning the decisions made by a dispute resolution council shall be filed to the court.
- 81.2. The taxpayers shall be entitled to file their complaints to the court where they disagree with the decisions made under Articles 81.1.1 and 81.1.2 of this Law.

Article 82 Sanctions to be imposed on persons who have reduced the tax liability

- 82.1. In the case, where the taxpayer for the purposes of not paying taxes, reducing the tax liability or concealing the taxable items has assessed the tax or under-assessed the tax, the state tax inspector shall re-assess tax and impose penalties as follows:
 - 82.1.1. In the event of reducing the tax liability by up to 50 percent, a penalty of 30 percent of the re-assessed taxes payable;
 - 82.1.2. In the event of reducing the tax liability by 50 percent and more, a penalty of 40 percent of the re-assessed taxes payable.
- 82.2 In the event of repeating the violations set forth in this Article, previously imposed reassessed taxes as a result of tax audit, a penalty of 50 percent of the re-assessed taxes shall be imposed.

Article 83 Sanctions to be imposed on persons failing to withhold taxes

- 83.1. In the case, where a withholding tax payer failed to withhold the taxes due, or withheld the taxes but failed to transfer and report on it, such taxpayer shall have an obligation to reimburse such taxes.
- 83.2. The persons stipulated in Article 83.1 of this Law shall be imposed a fine of 40 percent of the payable tax due.
- 83.3 In the event of repeating the violations set forth in this Article, previously imposed reassessed taxes as a result of tax audit, a penalty of 50 percent of the re-assessed taxes shall be imposed.

Article 84 Sanctions to be imposed on persons violating the Law on value added taxes

- 84.1. In the event of reducing the amount of the taxes payable to the budget, or failure to pay taxes, due to the following action or inactions, the taxes payable shall be reimbursed, and penalties shall be imposed at 40 percent of the payable taxes due:
 - 84.1.1. In the case, where the private individuals or the legal entities have met the requirements for registering as the value added tax withholder under the Law on value added taxes, but failed to obtain a certificate and manufactured and/or sold goods, performed work and/or rendered services;
 - 84.1.2. In the case, where the private individuals or the legal entities registered as the value added tax withholders failed to charge the value added taxes on goods manufactured and/or sold, works performed and/or services provided;
 - 84.1.3. In the case, where the value added tax withholder charged the value added taxes on their goods manufactured and/or sold, works performed and/or services provided, but failed to pay it to the budget;
 - 84.1.4. In the case, where the private individuals or legal entities that have not registered as a value added tax withholder have manufactured and/or sold goods, performed works and/or provided services and charged the value added taxes on those, but failed to pay it to the budget;
 - 84.1.5. In the event of discrepancies between the value added tax invoices and the payment receipts, or a failure to issue invoices and payment receipts for the purpose of reducing value added taxes payable to the budget or increasing the amount of tax refunds.
- 84.2 In the event of repeating the violations set forth in this Article, previously imposed reassessed taxes as a result of tax audit, a penalty of 50 percent of the re-assessed taxes shall be imposed.

Article 85 Sanctions to be imposed on the state tax inspectors

- 85.1. The state tax inspectors and the collectors shall be sanctioned for the following violations according to the principles as specified in the Articles 105, 106 and 107 of the General Administrative Law:
 - 85.1.1 Disclosure of the taxpayers' confidential information protected by tax legislation;

- 85.1.3 Misuse of his/her rights granted by this Law in excess, or failure to properly fulfill his/her obligations.
- 85.2 In the case, where the taxpayer suffered a damage due to the state tax inspectors and collectors' violations referred to in Article 85.1 of this Law, the guilty official shall be responsible for the damage caused.

Article 86 Effectiveness date of the Law

86.1. This Law shall come into force on 1 January 2020.

SIGNATURE

LAW OF MONGOLIA

March 22, 2019

Ulaanbaatar city

ECONOMIC ENTITY INCOME TAX LAW

(revised version)

CHAPTER ONE GENERAL PROVISIONS

Article 1. Purpose of the law

1.1. The purpose of this law is to regulate relations with respect to imposition of income tax on economic entity, payment thereof to the budget, and its reporting.

Article 2. Legislation on economic entity income tax

2.1. The legislation on economic entity income tax (hereinafter referred to as 'tax') shall consist of the Constitution of Mongolia, General Law on Taxation, this law, and other legislative acts enacted in conformity with these laws.

Article 3. Framework of the law-

3.1. This law shall regulate relations concerning imposition of tax on income of taxpayers located in and outside of Mongolia:

Article 4. Definition of legal terminology

- 4.1. The following terms used in this law shall have the following meanings:
 - 4.1.1 "Economic entity" refers to domestic or foreign legal entity that is engaged in commercial activities, and other non-profit entities earning revenue by selling goods, performing works or providing services even though their core business is not for profit;
 - 4.1.2 "Intangible asset" refers to a non-material substance as defined in paragraph 84.5 of the Civil Code;
 - 4.1.3 "Exchange rate real gain (loss)" means any exchange rate gain (or loss) derived from sale or purchase of foreign currency and transactions on receivables and payables expressed in foreign currency;
 - 4.1.4 "Income earned from foreign country" refers to revenues, other than the ones defined in Articles 4.1.6 and 4.1.7 of this law, of a taxpayer or permanent establishment specified in the Article 5.3 of this Law;
 - 4.1.5 "Expenses for business protocol and reception" refers to expenses for transportation, reception, hotel, restaurant and interpreter for guests and delegates for the purpose of establishing new relations or expanding business cooperation;
 - 4.1.6 "Income earned in Mongolia" refers to an income specified in Article 7.4 of this law and earned by a taxpayer in the territory of Mongolia.
 - 4.1.7 "Income earned from a source in Mongolia" means the following income of a taxpayer:

- 4.1.7.a. income earned from sale of goods, works performed and services provided by a non-resident taxpayer directly or electronically and paid by a resident taxpayer or a Permanent Establishment residing in Mongolia;
- 4.1.7.b. income of a foreign economic entity specified in Provision 5.5.2 of this law earned from art, cultural performance and sport events organized in the territory of Mongolia;
- 4.1.7.c. dividends distributed by a resident taxpayer in Mongolia to a non-resident taxpayer;
- 4.1.7.d. interest related to Article 9.4 of this law and paid or transferred by a state or local government organization, or a resident taxpayer or Permanent Establishment to a non-resident taxpayer;
- 4.1.7.e. income from sale, transfer and rent of property and titles related to the property owned, possessed or used by a non-resident taxpayer.
- 4.1.7.f. income of non-resident taxpayer earned from royalty, fees, lease and use of immovable, movable, intangible assets, interest for financial leasing, technical, management and consulting services, paid by a resident taxpayer;
- 4.1.7.g. income transferred from a resident Permanent Establishment to its non-resident taxpayer, who is operating in Mongolia through the Permanent Establishment;
- 4.1.7.h. income earned from sale or transfer of property and titles related to these properties owned, possessed or used by a Permanent Establishment of a non-resident taxpayer;
- 4.1.7.i. Income of a non-resident taxpayer earned from sale or rent of movable and immovable assets and intangible assets to be used by its Permanent Establishment.
- 4.1.7.j. other income similar to those specified in Provisions 4.1.7.a 4.1.7.i of this law.
- 4.1.8 "Withholder" is as defined in Article 6.1.19 of the General Law on Taxation;
- 4.1.9. "Immovable property" is as defined in Articles 84.3 and 86.2 of the Civil Code;
- 4.1.10. "Exploration expenditures" refers to expenditures directly connected to the activities specified in–Article 4.1.6 of the Minerals Law of Mongolia and Article 4.1.8 of the Petroleum Law of Mongolia as well as activities related to exploring radioactive minerals.
- 4.1.11. "Related Parties" is as defined in Article 27 of the General Law on Taxation of Mongolia.
- 4.1.12. "License holder" is an individual who holds special permits for the exploration and exploitation of useful minerals, radioactive minerals and petroleum, as well as land use and possession rights as per conditions and requirements stipulated by law.

Article 5. Taxpayer of economic entity income tax

- 5.1. An economic entity that earns taxable income or that is liable to pay a tax for a tax year under this Law shall be a taxpayer.
- 5.2. Taxpayer shall be classified as a resident taxpayer or non-resident taxpayer of Mongolia.
- 5.3. Resident taxpayer of Mongolia shall include the following economic entities:
 - 5.3.1. An economic entity incorporated within the laws of Mongolia;
 - 5.3.2. A foreign economic entity that has its effective place of management located in Mongolia;
- 5.4. "A foreign economic entity that has its effective place of management located in Mongolia" specified in 5.3.2 of this law means a foreign legal entity meeting three or more conditions of the below criteria:
 - 5.4.1. Over 50 percent of its shareholders or shareholders, who execute own rights and responsibilities through their direct or in-direct delegates, are residing in Mongolia;
 - 5.4.2. Over 50 percent of shareholders' meetings are held in Mongolia;
 - 5.4.3. Accounting books and financial documents are kept in Mongolia;
 - 5.4.4 Not less than 25 percent of the Board Directors or those who perform their Directors' rights and responsibilities directly or in-directly through its own delegates, are residing in Mongolia;
 - 5.4.5 At least 60 percent of total sales revenue is earned from a source in Mongolia;
- 5.5. Non-resident taxpayer of Mongolia shall include the following economic entities:
 - 5.5.1. A foreign economic entity operating in Mongolia through its permanent establishment;
 - 5.5.2. A foreign economic entity earning income in Mongolia or from a source in Mongolia in a form other than that specified in Article 5.5.1 of this Law;

Article 6. Permanent establishment

- 6.1. A "Permanent Establishment" refers to a unit running businesses of a taxpayer specified in 5.5.1 of this Law fully or partially in Mongolia;
- 6.2. A Permanent Establishment defined in 6.1 of this Law includes the following units:
 - 6.2.1. a place of management;
 - 6.2.2. a branch and unit;
 - 6.2.3. a place for conducting trainings and workshops, and organizing fair or exhibition;
 - 6.2.4. a warehouse, and trade and service place
 - 6.2.5. a mine, oil or gas well, open-pit or any other place for extraction of minerals;
 - 6.2.6. a plant
 - 6.2.7. Other site, unit or accommodation covered under Article 6.1 of this Law;
- 6.3. A construction site or construction or installation object existing, or construction and supervision operations continuing for a period of 90 and more days within 12 consecutive months shall be deemed to be a Permanent Establishment.
- 6.4. Technical, advisory, management, supervisory and other services continuing for a period of 183 and more days within 12 consecutive months provided by own

employees or other hired workers to a resident taxpayer shall be deemed to be a Permanent Establishment.

- 6.5. The period specified in Articles 6.3 and 6.4 of this Law shall be counted as a total period spent for similar or inter-related works and services of related parties.
- 6.6. Following person having businesses related to the sale of goods, provision of services and conclusion of contracts in Mongolia on behalf of a non-resident taxpayer shall be deemed to be a Permanent Establishment:
 - 6.6.1. keep, sell or supply goods on behalf of the non-resident taxpayer
 - 6.6.2. concludes contract by itself, or organizes conclusion of a contract without making any principle changes in the contract of a non-resident taxpayer;
- 6.7. A contract qualifying one of the following terms shall be deemed to be the contract specified in Article 6.6.2 of this Law:
 - 6.7.1. be concluded by the name of a non-resident taxpayer;
 - 6.7.2. transfer of property owned, or possessed or used by a non-resident taxpayer, or transfer of non-resident taxpayer's title for use or possess of a property to others;
 - 6.7.3. provide services of a non-resident taxpayer.
- 6.8. Notwithstanding what is specified Articles 6.1, 6.2, 6.3, 6.4, 6.5, 6.6 and 6.7 of this Law, a non-resident taxpayer shall be deemed to have a Permanent Establishment in Mongolia if it collects premiums in Mongolia in the form other than for re-insurance or it insures risks situated therein through another person
- 6.9. "Permanent Establishment" term of a valid International agreement for avoidance of double taxation and prevention of evasion with respect to taxes on property and income ratified by the State Great Khural of Mongolia shall be deemed the same as the Permanent Establishment of this Article.
- 6.10. Head of a Government administrative agency in charge of tax matters shall approve reporting forms of a Permanent Establishment, and procedures for registration and deregistration of and filing and paying tax by the Permanent Establishment.

CHAPTER TWO GROSS TAXABLE INCOME

Article 7. Gross taxable income

- 7.1. Income earned for a tax year in Mongolia, or derived from a source in Mongolia, or in foreign country by a taxpayer specified in Article 5.3 of this Law shall be subject to tax.
- 7.2. Income earned through a Permanent Establishment for a tax year in Mongolia, or from a source in Mongolia by a taxpayer specified in Article 5.5.1 of this Law shall be subject to tax.
- 7.3. Income earned in Mongolia or from a source in Mongolia by a taxpayer specified in Article 5.5.2 of this Law for a tax year shall be subject to tax.
- 7.4. The following income of a taxpayer shall be subject to tax:
 - 7.4.1 Income from activities/operations;

- 7.4.2 Income from property;
- 7.4.3 Income from sale or transfer of property; and
- 7.4.4 Other income.
- 7.5 A tax exempt income shall be deducted for determining gross taxable income

Article 8. Income from activities

- 8.1. The following incomes from activities of a taxpayer shall be subject to tax:
 - 8.1.1 income from sale of goods and services;
 - 8.1.2 income from operating a quiz, gambling, and lottery business;
 - 8.1.3 income from technical, management, consulting, and other services;
 - 8.1.4 income from goods, works, and services received from others free of charge; and
 - 8.1.5. other incomes similar to those specified in Articles 8.1.1, 8.1.2, 8.1.3, 8.1.4, 8.1.5, 8.1.6, 8.1.7 and 8.1.8 of this Law.
- 8.2. "Income of technical service" specified in Articles 6.4 and 8.1.3 of this Law shall refer to revenue earned from services for introducing new technology, developing documents with norms on labor and technical safety, and norms on labor and production to be applied to works and services, conducting socio-economic researches, providing installation or assembly of equipment, providing repair and maintenance work, making assay laboratory test, training engineers and technical workers, and upgrading professional skills.
- 8.3 "Income of management service" specified in Articles 6.4 and 8.1.3 of this Law shall refer to revenue earned from services for improving efficiency of operation /production, works and service/ of an economic entity provided by a specialist of an economic entity based on a contract or mutual agreement.
- 8.4 "Advisory service income" specified in Articles 6.4 and 8.1.3 of this Law shall refer to revenue earned from works and services, such as providing professional and methodological guidance on management, marketing, market and investment environment, and production process steps to an economic entity, and developing documents for it.
- 8.5. Above stated incomes of a taxpayer, whose business is to earn income from property, or sale and transfer of property and be considered as an income from activities according to the International accounting standards, shall be considered as an income stated under 8.1.1 of this Law.

Article 9. Income from property

- 9.1. The following incomes of property of a taxpayer shall be subject to a tax:
 - 9.1.1. Income from lease of or to let someone use movable and immovable property;
 - 9.1.2. Income from royalties;
 - 9.1.3. Income from dividends; and
 - 9.1.4. Income from interest.
- 9.2. Royalty income specified in Article 9.1.2 of this Law shall include the following payments:

- 9.2.1. payment for use of, or a right to use copyrighted works specified in the Law on Copyright and Corresponding Rights;
- 9.2.2. payment for use of, or a right to use inventions, product prototype, and useful design specified in the Patent Law;
- 9.2.3. payment for use of, or a right to use trademarks specified in the Law on Trademark and Geographic Specification;
- 9.2.4. payment for transfer of technology specified in the Law on Transfer of Technology;
- 9.2.5. payment for use of, or a right to use information related to production, trade, and scientific experiment;
- 9.2.6. payment for use of, or a right to use industrial, commercial, or scientific equipment; or
- 9.2.7. payment for use of, or a right to use other rights similar to those specified in Articles 9.2.1, 9.2.2, 9.2.3, 9.2.4, 9.2.5 and 9.2.6 of this Law.
- 9.3. Income from dividends specified in Article 9.1.3 of this Law shall include shareholdings, income in monetary and non-monetary forms received based on a partnership or a cooperation agreement, profit-share and other similar income, which will be considered as dividends according to laws and regulations of Mongolia.
- 9.4. Income from interest specified in Article 9.1.4 of this Law shall include income, which directly relates to all types of debt, credit, payables, checking and saving account, warranty, guarantee, loan, bonds, and debt instruments and their bonuses paid by a borrower to a taxpayer notwithstanding whether they are backed with collateral or have equity rights or not, and other incomes to be considered as interest income according to the laws of Mongolia.

Article 10. Sale and transfer of property

- 10.1. Following income from sale or transfer of property shall be subject to tax:
 - 10.1.1. income from sale of immovable property;
 - 10.1.2. income from sale or transfer of a right issued by a government agency;
 - 10.1.3. income from sale of shares, securities and other financial instruments;
 - 10.1.4. notwithstanding the Articles 10.1.2 and 10.1.3 of this Law, income from sale or transfer of intangible and movable property;
- 10.2. Income from sale or transfer of a right to own or possess or use an intangible asset, that is not specified in Article 10.1.2 and 10.1.3 of this Law shall be considered as income specified in Article 10.1.4 of this Law.

Article 11. Other income

- 11.1. Income specified in Article 7.4.4 of this Law shall include the followings:
 - 11.1.1. income from interest and penalty, and compensation for damages caused by infringement of contractual duties;
 - 11.1.2. income from a prize of quiz, gambling and lottery;
 - 11.1.3. profit transferred from a Permanent Establishment to its parent company for a tax year.
 - 11.1.4. exchange rate real gain

- 11.1.5. refund made in accordance with Article 9.11 of the Law on Environmental Impact Assessment, and Articles 11.1.4 and 12.5 of the Petroleum Law; and
- 11.1.6. insurance refund

Article 12. Recognition of income

- 12.1. A taxpayer shall recognize an income in following conditions:
 - 12.1.1. when goods are shipped or loaded;
 - 12.1.2. work proportionate to its performance;
 - 12.1.3. when service income is received, or terms stated in the contract are met;
 - 12.1.4. other incomes at every occasion when it is fully performed, or revenue is received;
- 12.2. If a taxpayer exchanges goods, works or services, an income will be recognized when the goods, works or services are received;

CHAPTER 3 DEDUCTIBLE EXPENSES FROM GROSS TAXABLE INCOME

Article 13. Deductible expenses from gross taxable income

- 13.1. Expenses that meet all following conditions at the same time shall be deducted from the gross taxable income:
 - 13.1.1. related to the tax period;
 - 13.1.2. incurred directly in connection with the operation for earning taxpayer's gross taxable income;
 - 13.1.3. real expense is incurred and is substantiated with proper documents specified in Article 13 of the Accounting Law;
 - 13.1.4. all goods, works and services excluding the ones specified below should be substantiated with receipts specified in Article 27.5 of the General Law on Taxation and a document substantiating payment of import duty in case the goods are imported.
 - 13.1.4.a. expenses incurred for works and service provided by a taxpayer other than the ones specified in Article 5.5.2. of this Law;
 - 13.1.4.b. expenses related to the purchase of tangible and intangible assets;
 - 13.1.5. expenses are paid or reported as a payable by a taxpayer, who runs the business;
- 13.2. Expenses shall be deducted from gross taxable income within the following limits and criteria if they meet the conditions specified in Article 13.1 of this Law.
 - 13.2.1. taxes, payments and fees are reported as to be paid to the budget;
 - 13.2.2. per diem expenses for business trips shall not exceed twice the civil servant's norm for per-diem expense;
 - 13.2.3. the loan loss provision of bank and non-bank financial institution shall not include any reserve established on outstanding balance of normal loan portfolio.

- 13.2.4. expense for eliminating damages derived from disasters as specified in the Disaster Management Law shall be based on the conclusions of a related organization;
- 13.2.5. expenses related to business protocol or reception activities shall not exceed 5 percent of total wage fund given to employees working on contracts specified in- the Labor Law during the tax year;
- 13.2.6. total amount of voluntary insurance premium of insurers other than the ones specified in the Article 4.1.2 of the Insurance Law shall not exceed 15 percent of taxable income of that year;
- 13.2.7. total amount of voluntary insurance premium received by the insurer specified in the Article 4.1.2 of the Insurance Law from its related parties shall not exceed 15 percent of its taxable income of that year;
- 13.2.8. regular maintenance expense including the cost of spare parts shall not exceed 2 percent of the residual value of an immovable property and 5 percent of the residual value in case of other properties, and the exceeding amount of the regular maintenance shall be accounted as capital maintenance;
- 13.2.9. social and health insurance premium and personal income tax are imposed on and withheld from salary, primary and additional wage, or income similar to these;
- 13.2.10. personal income tax is imposed on and withheld from an in-direct income specified in Article 11 of the Personal Income Tax Law;
- 13.2.11. interest expense shall be determined according to Article 14 of this Law;
- 13.2.12. a tax must be withheld from an issued income, which is subject to tax and be reported;
- 13.3. Any expenses incurred in relation to holding or obtaining from others a mining or exploration license shall be capitalized and deducted equally every year for over the effective period of the license;
- 13.4. Monetary fund for environmental restoration or mine closure accumulated by a license holder or contractor in accordance to the Mineral Law, Petroleum Law and Atomic Energy Law shall be included in the operational expense and deducted equally each year for over the effective period of the license.
- 13.5. A holder of a mineral license shall calculate expenses deductible from gross taxable income by each report in accordance with Articles 26.9, 26.10, 26.11, 26.12 and 26.13 of this Law.

Article 14. Interest expense deductible from gross taxable income

- 14.1. Interest expense incurred for transferring the incomes specified in Articles 9.1.4 of this Law to others shall be deducted from gross taxable income.
- 14.2. The deductible expense specified in Article 14.1 of this Law is limited to 30 percent of total sales revenue minus all deductibles, which meet all requirements of this Law, but before interest, depreciation and amortization for the reporting period.
- 14.3. Notwithstanding Articles 14.2 of this Law an interest expense for an investor's loan exceeding three folds of his previous investment made to the taxpayer shall not be

deductible from gross taxable income and shall be subject to a tax by assuming it as a dividend to the investor.

- 14.4 The "previous investment' stated in Articles14.3 of this Law includes a common share, preferred share, golden share, securities related to a share, or investment made in equity of the economic entity either directly or through purchase of share, and money and all types of assets or rights transferred without repayment condition;
- 14.5. Limitation specified in the Articles 14.2 of this Law does not apply to an economic entity licensed for operations specified in Articles 6.1.1 and 6.1.2 of the Banking Law and Article 7.1.1 of the Law on Non-Banking Financial Operation.
- 14.6. Interest expense for a loan received from an individual resident shareholder of the economic entity is not deductible from gross taxable income.
- 14.7. The Articles 14.1, 14.2, 14.3, 14.4 and 14.5 of this Law shall apply to a Permanent Establishment.

Article 15. Other deductible expenses from gross taxable income

- 15.1. The following expenses are deductible from gross taxable income if they meet conditions specified in Article 13:
 - 15.1.1. normal amortization of goods and material;
 - 15.1.2. social and health insurance premium;
 - 15.1.3. taxes, payments and fees reported as payable to a budget except those specified in Article 16.1.8 of this Law;
 - 15.1.4. expenses for facilitating training environment of Vocational Training Center, and providing equipment and repairing building for student practice;
 - 15.1.5. expenses for training of Vocational Training Center teachers specified in Articles 11.5 and 18 of this Law on Vocational Education and Training;
 - 15.1.6. financial supports provided to vocational education and training institutions to order own professionals;
 - 15.1.7. Donation of up to MNT10.0 million to support a non-government organization established by disabled Mongolian citizen;
 - 15.1.8. donation up to MNT10.0 million to support operations of sport associations or clubs;
 - 15.1.9. donation and capital invested into a fund to support vocational education and training;
 - 15.1.10. donation to reduce air pollution;
 - 15.1.11. money deposited into the fund for protection against possible risks of banking and non-banking financial institutions
 - 15.1.12. money pooled into a loan loss provision of a credit cooperative and a risk fund of other types of cooperatives;
 - 15.1.13. amount included in the Annual Environmental Management Plan and deposited or transferred to a special fund established by a government agency or an account specified in the Article 11.2.9 of the Petroleum Law in accordance with the Minerals Law, Petroleum Law and Atomic Energy Law of Mongolia.

- 15.1.14. expenses accumulated in the "Fund for Elderly People" within the limitations stated in the Law on Elderly People.
- 15.2. The Government of Mongolia shall approve the amount of amortization specified in Article 15.1.1 of this Law.

Article 16. Non-deductible expenses from gross taxable income

- 16.1. The following expenses shall not be deducted from gross taxable income:
 - 16.1.1. expenses not meeting the conditions specified in Articles 13.1 and 13.2 of this Law;
 - 16.1.2. principle payment of leased assets;
 - 16.1.3. payment made to others as interest, penalty or loss for infringement of contractual duties;
 - 16.1.4. expenses for relaxation of employees or client entities, or individuals, and similar type of other expenses;
 - 16.1.5. losses on sale of property to a related party;
 - 16.1.6. payment made by a Permanent Establishment to its parent economic entity for interest, for use or rent of immovable or movable property, royalty, and technical, management, consultancy and other services.
 - 16.1.7. expenses incurred for earning tax exempt income specified in this Law;
 - 16.1.8. Value Added Tax paid to a budget by a withholder of Capital city tax and value added tax, and other taxes withheld from other person's earnings;
 - 16.1.9. exchange rate real loss;
 - 16.1.10. additions to the value of a good through revaluation;
 - 16.1.11. loan recovered from loan loss provision of an economic entity operating in banking, non-banking financial and credit cooperative operation;
 - 16.1.12. donation and assistance expenses other than specified in the Articles 15.1.6, 15.1.7, 15.1.8, 15.1.9 and 15.1.10 of this Law.

Article 17. Calculation of depreciation and amortisation

17.1. Depreciation of an asset to be used by a taxpayer for one or more years shall be calculated as follows:

N⁰	Asset group	Useful life /in years/	
		For holders of	
		special	
		permits for	
		exploration	
		and use of	Other
		useful	Other
		minerals,	
		radioactive	
		minerals and	
		petroleum	
1	Building, construction, and land improvement	40	25

2	Machinery and equipment	10
3	Computer, associated equipment, and software	2
4	Intangible asset that has definite effective period	Throughout the
	/including mining and exploration license/	effective period
5	Other assets	10

- 17.2. Additions made to the value of an asset through revaluation cannot be depreciated.
- 17.3. Depreciation shall be calculated using the straight-line method.
- 17.4. Expenses for purchase, construction, assembling and transportation of a non-current asset, and insurance costs related to the transportation of that asset will be included in the asset's value from which the depreciation is calculated.
- 17.5. Expenditure for capital maintenance specified in Article 13.2.8 of this Law shall be added to a residual value of an asset and depreciated over its remaining useful life.
- 17.6. If an asset is used partially to earn gross taxable income, depreciation expense shall be calculated proportionate to the used part and deducted from gross taxable income.
- 17.7. Current assets, land, inventory stocks, fine art, antiques, precious items, and other similar assets are not subject to depreciation.
- 17.8. If a taxpayer purchases building and other assets together, the purchase price should be allocated to each asset acquired with this purchase. If the building is to be removed to permit the construction of a new building, then all expenses for removal of the building and the purchase price shall be included in the cost of the building.
- 17.9. If a taxpayer stops irrevocably to use a depreciable asset for the purpose of earning gross taxable income, the higher of a residual value or fair market value of that asset shall be considered as income from sale of the asset and a tax shall be imposed on it.
- 17.10. Total price of a leased asset of the Lessee equals to the sum of all payment for the lease.
- 17.11. Deduction for depreciation expense of newly acquired asset shall commence on the first day of the following month.
- 17.12. Deduction for depreciation expense of an asset under construction process shall commence from the first day of the following month of its registration in the book as a fixed asset and use for its intended purpose.
- 17.13. A holder of an exploration license for minerals or radio-active minerals, and a contractor-economic entity specified in the Petroleum Law shall accumulate and capitalize exploration expenses, license fee, and costs related to holding, acquiring and transferring the license as an exploration asset and depreciate it over the life of the mine or site.
- 17.14. Money transferred to a special fund specified in Article 38.1.8 of the Mineral's Law-, an account specified in Article 11.2.9 of the Petroleum Law or a fund specified in Article 28.9 of the Nuclear Energy Law shall be considered as the exploration asset specified in-Article 17.13 of this Law.
- 17.15. "Land improvement" specified in Provision 17.1 of this Law shall not include stockpile preparation expenses related to mining operations.

CHAPTER 4 DETERMINING TAXABLE INCOME

Article 18. Determining a taxable income

- 18.1. An income tax shall be imposed on a taxpayer's taxable income in a tax year.
- 18.2. Taxable income shall be determined by deducting expenses in accordance with this Law from a gross taxable income specified in Articles 8.1.1, 8.1.3, 8.1.4, 8.1.5, 9.1.1, 11.1.1 and 11.1.4 of this Law, and a taxable income for the given year shall be determined by deducting the losses carried forward specified in Article 19 of this Law from the taxable income.
- 18.3. Taxable income from sale of share, securities, or other financial instruments shall be determined by deducting the purchase price and other evidenced fees incurred related to the purchase of the shares or securities from the selling price.
- 18.4. Taxable income specified in Article 8.1.2 of this Law shall be determined by deducting evidenced expenses incurred for earning the income and qualifying criteria specified in the Article 13.1 of this Law, and amount of prize or price of goods given to winners from gross taxable income;
- 18.5. Taxable income on the sale or transfer of an intangible asset or movable property specified in Article 10.1.4 of this Law shall be determined by deducting residual value of the asset from a revenue of the transfer.
- 18.6. Taxable income of the following income shall be determined by sum of each type of gross taxable income:
 - 18.6.1. income from royalty;
 - 18.6.2. income from dividends;
 - 18.6.3. income from interest;
 - 18.6.4. proceeds from sale or transfer of immovable property;
 - 18.6.5. prize from winning quiz, gambling and lottery;
 - 18.6.6. profit transferred from a Permanent Establishment to its parent economic entity in a tax year;
 - 18.6.7. income specified in Articles 11.1.5 and 11.1.6 of this Law;
 - 18.6.8. income specified in Articles 4.1.6 and 4.1.7 of this Law earned by a nonresident taxpayer except a Permanent Establishment registered according to the procedures specified in Article 6.10 of this Law;
- 18.7. Income from sale or transfer of a right specified in the Article 10.1.2 of this Law shall be determined by deducting value of the right and below expenses substantiated by evidence.
 - 18.7.1. in case the right is obtained from the government organization, a payment or fee substantiated by receipts of the government organization;
 - 18.7.2. in case it is purchased or transferred from others, a payment made according to a purchase or transfer contract and substantiated by evidences;
- 18.8. The method specified in Article 30.6 of this Law shall be used for calculating value of a right for possession or use of land, and an exploration or mining license for minerals.

- 18.9. In the case of liquidation of an economic entity in which a taxpayer is a shareholder, taxable dividend income shall be determined by deducting initial purchase price from income prorated to the taxpayer's shares and contributed paid-in capital.
- 18.10. If a loan deducted from a loan loss provision of a bank, non-banking financial institution and savings and credit cooperative is re-paid, the repaid amount shall be subject to a tax specified in this law.
- 18.11. Taxable income of an economic entity that conducts insurance activities shall be determined by deducting a reserve fund established in the year as approved by a government body and operating expenses from total income of its insurance operations.
- 18.12. Taxable income of a Permanent Establishment shall be determined by the same principles as for a resident taxpayer of Mongolia as specified in this Law, and no term or condition apply to reduce taxable income of the Permanent Establishment.

Article 19. Carry forward loss on tax return

- 19.1. A loss reported on tax return (hereinafter referred to as 'loss') is an excess of total deductible expenses qualifying requirements specified in this Law over gross taxable income.
- 19.2. The loss shall be deducted from the taxable income each year during four (4) consecutive years following the tax year of the loss occurrence and the amount of the carry-forward loss shall be limited by 50 percent of the gross taxable income of each year.
- 19.3. The balance of the carry-forward loss that remains not deducted after four (4) tax years-over that exceeds the limit specified in 19.2 of this law shall not be deducted from taxable income any further.
- 19.4. If there are losses in more than one tax year, the losses will be deducted from taxable income in the order, in which the losses incurred.
- 19.5. Losses that are incurred abroad by a Permanent Establishment of a Mongolian economic entity cannot be deducted from a taxable income of the Mongolian economic entity.
- 19.6. When carrying forward the losses calculated according to Article 13.5 of this Law, the holder of special permits for exploration or exploitation of useful minerals, radioactive minerals and petroleum shall observe Provisions 26.9, 26.10, 26.11, 26.12 and 26.13 of this Law as a taxpayer.
- 19.7. If mineral license is expired, terminated, or returned fully, Article 19.6 of this Law shall not apply to the deduction of residual carry forward losses.
- 19.8. In case of restructuring of an economic entity by merge or integration or separation according to the Civil Code, the Company Law and the Partnership Law, the residual amount of the loss shall not be deductible from gross taxable income any further.
- 19.9. Loss specified in Article 19.1 of this Law shall not include losses reported in previous years' tax returns and not approved by tax administration before January 1, 2020.
- 19.10. Loss reported on a tax return of an economic entity invested in a free zone shall be deducted from its taxable income for the next four (4) consecutive years since its

completion of the development work and commencement of its operation or production.

19.11. Head of Government administrative agency in charge of tax matters shall approve procedures on carry forward of losses reported on tax return and verification of the losses.

CHAPTER 5 TAX RATES AND AMOUNT

Article 20. Tax rates and amount

- 20.1. If the annual taxable income determined in accordance with Articles 18.2, 18.3, 18.4, 18.5 of this law is MNT 0 6 billion, it shall be taxed at the rate of 10 percent. If the annual taxable income exceeds MNT 6 billion, it shall be MNT 600.0 million plus 25 percent of income exceeding MNT 6 billion.
- 20.2. The following taxable income of a taxpayer shall be taxed at the following rates:
 - 20.2.1. income set forth in Articles 18.6.1, 18.6.2, 18.6.3, 18.6.7 & 18.7 of this Law 10 percent;
 - 20.2.2. income set forth in Article 8.6.4 of this Law 2 percent;
 - 20.2.3. income set forth in Article 8.6.5 of this Law 40 percent
 - 20.2.4. income set forth in Articles 18.6.6 and 18.6.8 of this Law- 20 percent:
 - 20.2.5. income from interest earned by a resident taxpayer (who does not hold any special permit for exploration or exploitation of useful minerals, radioactive minerals and petroleum, and is someone who is specified in Provision 4.1.12 of this law) who purchased debt instruments and unit rights publicly traded on foreign or domestic primary or secondary securities markets, 5 percent;
 - 20.2.6. if the taxpayer obtained loans or debt instruments from foreign and domestic sources of Mongolian commercial banks, then the income from the interests earned shall be taxed at the rate of 5 percent;
 - 20.2.7. Notwithstanding Provision 20.1 of this law, if the taxpayer earned annual taxable income of up to MNT 300 million specified in provisions 18.2, 18.3, 18.4 and 18.5 of this law, the taxable income earned by the taxpayer operating in sectors other than those specified in 22.1.1, 22.1.2 and 22.1.3 of this law shall be taxed at the rate of 1 percent.
- 20.3. A rate specified in the stabilization certificate shall apply to a taxpayer with stabilization certificate.

CHAPTER 6 A TAX EXEMPTION AND CREDIT

Article 21. Tax exemption

- 21.1. The following income of a taxpayer shall be exempt from tax:
 - 21.1.1. payment, interest, and penalty & due loss on bonds and notes issued by the government, or the Development Bank of Mongolia;

- 21.1.2. dividends specified in Article 7.1.1 of the Future Heritage Fund
- 21.1.3. income allocated from budget to the Future Heritage Fund, and income earned from the Fund's investment;
- 21.1.4. income specified in Articles 20.1 and 18.6.2 of this Law derived from sale of a taxpayer's portion of product under a product-sharing agreement in oil industry;
- 21.1.5. income of a Credit Guarantee Entity earned from its core legal operation;
- 21.1.6. premium income of a Deposit Insurance Fund;
- 21.1.7. dividends allocated to the Government from a state-owned enterprise;
- 21.1.8. income of a taxpayer specified in Article 21.1.4 of this Law derived from a sale of own portion of product and transferred to abroad;
- 21.1.9. income from activities of an organization specified in Article 12.1 of the Law on Education and Article 15.1 of the Law on Health;
- 21.1.10. Income from activities of an entity, whose core business is not for profit.
- 21.1.11. Income from maintenance service fees specified in the Apartment Owners Association Charter and collected from its members, and monies concentrated in the fund specified in provision 6.1.7 of the Law on Legal Status of Apartment Owners Association and Communal Property of Public Apartment Buildings.
- 21.1.12. Income of cooperatives earned from the price differences when marketing the sale of products of the members.

Article 22. A tax credit

- 22.1. In case the taxable income specified in Article 18.2, 18.3, 18.4 and 18.5 of this law is reflected in the year-end tax statement as less than MNT 1.5 billion, the taxpayer operates in sectors other than those mentioned below, and the taxpayer was established under the Mongolian laws except those specified in Provision 20.2.7 of this law, 90 percent of the tax imposed as per provision 20.1 of this law shall be exempted:
 - 22.1.1. exploration, mining, use, transportation and sale of mining and radio-active minerals;
 - 22.1.2. producing alcohol drinks, and planting, producing and importing tobacco;
 - 22.1.3. exploration, extraction, processing and whole sale of oil products, and trade and import of gasoline and diesel fuel;
- 22.2. A tax credit specified in Article 22.1 of this Law shall be implemented by determining the tax amount based on the year-end tax statement, and refunding the tax the taxpayer within the timeframe specified in this law, as per Article 28 of this law. Tax refunds shall be issued within 30 working days following the final deadline for filing tax returns, regardless of the deadline specified in provisions 28.4.2 and 28.4.3 of this law.
- 22.3. Gross taxable income subject to a tax credit specified in Articles 20.2.7 and 22.1 of this Law shall be determined on an aggregate basis of the gross taxable incomes earned by related parties.

- 22.4. An economic entity reporting and paying taxes in accordance with Articles 20.2.7 and 22.1 of this Law shall not be subject to the tax credit specified in Article 22.5 of this Law.
- 22.5. A tax credit shall be granted to the following income:
 - 22.5.1. Tax imposed on taxable income specified in provision 7.4.1 of this law and generated by the taxpayer specified in provision 5.3.1 of this law from activities carried out on a regular basis in the territory of an aimag or soum located more than 500 km away from the capital city Ulaanbaatar, which has its head-office registered with the local registry, communicates with the local tax department and creates jobs (to be substantiated with the payment slips of social insurance fees) shall be exempted by 50 percent for the aimags and soums located more than 500 km away from Ulaanbaatar city, and by 90 percent for the aimags and soums located more than 1,000 km away from Ulaanbaatar city.
 - 22.5.2. the type of tax on income of an economic entity that employs more than 25 employees, from which 2/3(two third) are disabled people;
 - 22.5.3. tax on income from sale of environmentally friendly equipment and tools economizing natural resources, reducing environmental pollution and waste;
 - 22.5.4. tax on income from sale of domestically produced innovative new products, works and services of a start-up company specified in the Law on Innovation, for three years since the date of its state registration;
 - 22.5.5. tax on 50 percent of income of an economic entity, who constructed sport facilities, hall, area and infrastructure qualifying the standards specified in the Article 26.2 of the Law on Physical Culture and Sports, sourced from operation of these facilities for 5 years since the beginning of their establishment;
 - 22.5.6 tax on income proportionate to the percentage of handicapped employees to the total number of employees of an economic entity that employs handicapped people, who lost over 50 percent of their working ability.
 - 22.5.7 a tax on income of an economic entity, who invested USD500.0 thousand or more in a free zone's infrastructure, such as energy and heating sources, pipelines, drinking water supply, sewerage, road, railway, airport and communication core network, earned from its operation in the free zone, but this tax credit is limited up to 50 percent of the investment made by the economic entity to the free zone;
 - 22.5.8 a tax on income of an economic entity, who invested USD300.0 thousand or more in establishing warehouse, freight loading and unloading facility, hotel, tourist complex, and factory producing products for import substitution or export, earned from its operation in the free zone, but this tax credit is limited up to 50 percent of the investment made by the economic entity to the free zone;
 - 22.5.9 a tax on income of an individual or an economic entity, or an organization, who financed activities for improving quality of natural water and restoring rivers and streams to increase water sources and ensure sustainable water

supply on certain territory, but this tax credit is limited by the amount equal to the financing made to these activities;

- 22.5.10. 50 percent of the tax imposed on income earned only from the following products produced or planted by the economic entity:
 - 22.5.10.a. grains, potatoes, vegetables,
 - 22.5.10.b. milk
 - 22.5.10.c. fruits and berries
 - 22.5.10.d. fodder, fodder plants
 - 22.5.10.e. meat and meat products produced at an intensified chicken farm
- 22.6. A list of equipment, products, works and services specified in Articles 22.5.3 and 22.5.4 of this Law shall be approved by the Government.
- 22.7. A tax credit for the reporting period shall not exceed the amount of a tax assessed and paid on that income.
- 22.8. Provision 22.5.1 of this law shall not apply to the following sectors:
 - 22.8.1. Exploration and mining of useful minerals, radioactive minerals and petroleum, nuclear energy related activities.
 - 22.8.2. Production, trade and import of alcoholic beverages
 - 22.8.3. Plantation of tobacco plants, production, trade and import of tobaccos and cigarettes
 - 22.8.4. Import and resale of petroleum products
 - 22.8.5. Running of speech services
 - 22.8.6. Establishment of energy sources and powerlines, production, sale and distribution of energy
 - 22.8.7. Civil airline operations
 - 22.8.9. Construction and repair of auto roads and road facilities.

Article 23. Foreign tax credit

- 23.1. Income tax paid to a government of a foreign country for a tax year by a resident taxpayer shall be deducted against Mongolian tax payables of the resident taxpayer.
- 23.2. In following cases a tax paid to the foreign country shall not be deducted from the tax payables:
 - 23.2.1. it is refundable although it is assessed in and paid to a foreign country;
 - 23.2.2. interest, penalty or loss paid to a foreign country;
 - 23.2.3. assessed and paid tax, which is not subject to imposition and payment of tax by tax laws and regulations of Mongolia;
- 23.3. The deduction allowed by Article 23.1 of this Law shall not exceed the lesser of the followings:
 - 23.3.1. the amount of Mongolian tax payable by the resident taxpayer for the year; and
 - 23.3.2. the Mongolian tax attributable to the income earned in the foreign country computed in accordance with Mongolian tax laws.
- 23.4. The amount specified in Article 23.3.2 of this Law shall apply to each foreign country to which a resident taxpayer pays income tax.

- 23.5. If amount of tax paid to foreign country exceeds the Mongolian tax payable, this exceeding amount shall not be refunded or cannot be carried-forward.
- 23.6. Verification of the tax amount to be deducted under Article 23.1 of this Law shall be based on a tax return submitted to a competent authority of the foreign country, official letter of the competent authority confirming the assessment and payment of the tax, and a document or reference issued by that authority confirming the payment of the tax.
- 23.7. Amount of tax deductible under Article 23 of this Law shall be verified by a relevant tax office.
- 23.8. The Mongolian government administrative agency in charge of tax matters shall legally be able to exchange information with the foreign country under Article 23.1 of this Law, and a list of these countries shall be announced by the Mongolian Government administrative agency in charge of tax matters in the last quarter of each year or within 10 days if any change has been made in this list.
- 23.9. Tax assessed in foreign country in accordance with Article 23 of this Law is not deductible from a payable tax of an economic entity registered in accordance with Article 29.1 of this Law.
- 23.10. Procedures for making request for deduction of a tax paid in a foreign country from a payable tax, a template form for its calculation, and verification process shall be approved by a head of a Government administrative agency in charge of tax matters.

CHAPTER 7

WITHHOLDING, REPORTING AND PAYING TAX TO A BUDGET, AND REFUND OF TAX

Article 24. Withhold and pay tax

- 24.1. A withholder shall impose and withhold a tax on a resident taxpayer's income specified in the Articles 18.6.1, 18.6.2, 18.6.3, 18.6.4, 18.6.5, 18.6.7, 18.6.8 of this Law.
- 24.2. A permanent establishment shall impose and withhold a tax on income specified in Article 18.6.6 of this Law.
- 24.3. If a taxpayer specified in Article 5.5.1 of this Law transfers income related to the operation of its Permanent Establishment to a non-resident person, the Permanent Establishment shall assess and withhold tax on this income.
- 24.4. If a withholder is not determinable according to this Law, a person, who earned an income subject to withholding tax shall assess and impose the tax by himself.
- 24.5. A tax withheld must be transferred to a budget within 10 working days.

Article 25. Self-assessing and paying tax to the budget

- 25.1. A relevant tax office shall deliver to a taxpayer a monthly and quarterly payment schedule of tax to be assessed in accordance with Articles 20.1 and 20.2.7 of this Law based on a schedule approved by a central government administrative agency in charge of budget and finance matters.
- 25.2. Based on the preliminary assessment made according to Article 25.1 of this Law a tax

shall be paid to the budget before 25^{th} of each month, a quarterly reconciled due amount within 20^{th} of the first month of the following quarter, and an annual reconciled due amount within February 10^{th} of the following year.

25.3. Government has a right to mobilize profit and dividends of its property ownership to a budget fully or partially, and their amount shall be defined by the budget law for that year.

Article 26. Tax reporting

- 26.1. A taxpayer, whose previous year's annual taxable income was equal or more than MNT6.0 billion, shall prepare and submit quarterly tax return to the relevant tax administration no later than 20th day of the first month of the following quarter and an annual tax report within February 10th of the following tax year.
- 26.2. A taxpayer, whose previous year's annual taxable income was less than MNT6.0 billion and not registered in the tax administration in accordance to Article 29.1 of the Law, shall prepare and submit semi-annual tax return to the relevant tax administration within July 20th and annual tax return within February 10th of the following tax year.
- 26.3. The annual taxable income specified in the Articles 26.1 and 26.2 of this Law shall be based on the taxpayer's annual taxable income reported in the annual tax return for the previous tax year.
- 26.4. A taxpayer shall prepare its tax return on accumulated basis from the beginning of a year.
- 26.5. A taxpayer shall attach a tax return on withholdings, which were imposed and withheld in accordance with Article 24 of the Law, to a related tax return.
- 26.6. A withholder, who paid income to a non-resident taxpayer and withheld a tax on that income, shall attach a report on the withholdings made in accordance with Article 24 of this Law, to a tax return, which should be submitted according to the Personal Income Tax Law.
- 26.7. A taxpayer, which is established within a tax year shall prepare and submit a tax return in accordance with Article 26.2 of this Law.
- 26.8. If no operation was reported for a tax year, the taxpayer shall deliver a report to the relevant tax office by February 10th of each year starting from the next tax year.
- 26.9. An economic entity engaged in exploration and mining of useful minerals, radioactive minerals and petroleum shall prepare and submit a tax return separately for each license according to this Law.
- 26.10. The tax return specified in Article 26.9 of this Law can be consolidated if all following conditions are met at the same time:
 26.10.1. areas of licenses hold by a taxpayer are located next to each other;
 26.10.2. types of mining products are same in case of mining licenses;
- 26.11. An area with both exploration and mining licenses is not subject to consolidated reporting under Article 26.10 of this Law.
- 26.12. A request for a consolidated reporting under Article 26.10 of this Law for the next tax year shall be submitted to a Government administrative agency in charge of tax matters within September 1st of the tax year.

- 26.13. The Government administrative agency in charge of tax matters shall review the request specified in Article 26.12 of this Law and give a response whether the request will be verified or not.
- 26.14. A tax imposed in accordance with Article 24.4 of this Law shall be paid by the taxpayers within the deadline specified in this Law.

Article 27. Country-by-country transfer pricing report

- 27.1. The following terms used in this Article shall have the following meaning:
 - 27.1.1. "Group" refers as specified in 6.1.8 of the General Law on Taxation;
 - 27.1.2. "MNE" refers to an entity meeting one of the followings:
 - 27.1.2.a. Operation is usually included in the consolidated financial statements of a Multinational enterprise group, or when stocks of an economic entity of the group is traded publicly through stock exchange;
 - 27.1.2.b. Does not refer to the consolidated financial statements of the Multinational enterprise group due to its operational scope and importance;
 - 27.1.2.c. A permanent establishment of an economic entity specified under 27.1.2.a and 27.1.2.b of this Law, preparing financial statements separately for the purpose of financial reporting, internal management, organization and supervision.
 - 27.1.3. "Consolidated financial statement" refers to financial statements in which the assets, liabilities, equity, income, expenses and cash flows of a MNEs are integrated as those for a single economic entity and prepared in accordance to the accounting standards;
 - 27.1.4. "International tax treaties" refers to Mongolian international tax agreements signed with other countries on exchange of information for tax purposes, international agreements for mutual administrative assistance in tax matters, or international agreements between two countries reflecting issues for exchange of information automatically or at request;
 - 27.1.5. "System failure" refers to a situation, where contractual obligations of a contract signed between competent authorities were obtained due to reasons other than the ones stated in the contract, or a resident MNE in Mongolia didn't submit a country-by-country report of the group on regular basis;
 - 27.1.6. "Multinational enterprise group not required to report" refers to a multinational enterprise group with sales revenue less than MNT1.7 trillion by the consolidated financial statements;
 - 27.1.7. "Reporting entity" shall be understood as a MNE in charge for preparing country-by-country report on behalf of a group, and it refers to a parent of the group, or appointed reporting entity or entity specified in Article 27.2.2 of this Law.
 - 27.1.8. "Appointed reporting entity" refers to a MNE appointed to prepare a countryby-country report on behalf of a parent of a group when conditions specified in- 27.2.2 of the Law are met;
 - 27.1.9. "Multinational enterprise group" is a group qualifying one of the following

conditions:

- 27.1.9.a. Two and more MNEs are located in other country or region for tax purposes, or a MNE operates in other country or region through its Permanent Establishment;
- 27.1.9.b. Other than the Multinational enterprise group not required to report specified in 27.1.6 of this law.
- 27.1.10. "Multinational enterprise group's financial year" is a period covered by financial statements of a parent of the Multinational enterprise group;
- 27.1.11. "Multinational enterprise group's reporting financial year" is a period covered by country-by-country transfer pricing report;
- 27.1.12. "A parent of a Multinational enterprise group" refers to a MNE, who meets the following requirements:
 - 27.1.12.a. main direct or in-direct owner of one or more MNEs of the MNE group, and responsible to submit Consolidated financial statements to the country or region, where it is located for tax purposes, or responsible to prepare Consolidated Financial Statements when stocks of one of the MNEs are traded publicly through stock exchanges;
 - 27.1.12.b. Other MNEs, excluding the one specified in Article 27.1.12.a. of this Law and do not directly or indirectly own main shares of one or more MNEs;
- 27.1.13. "Agreement between competent authorities" refers to the followings:
 - 27.1.13.a. Agreement to be concluded between competent authorities appointed by parties of the International Agreement;
 - 27.1.13.b. Agreement obliging exchange of country-by-country reports;
- 27.2. Following taxpayer shall deliver a country-by-country report to a relevant tax administration within 12 months since the last day of a Multinational enterprise group's financial year:
 - 27.2.1. A parent of a Multinational enterprise group located in Mongolia for tax purpose;
 - 27.2.2. A MNE, who is not a parent but located in Mongolia for tax purposes and meets one of the following conditions:
 - 27.2.2.a. a parent of a Multinational enterprise group is not legally responsible to prepare and submit country-by-country report by laws of a country or region where the parent is located for tax purposes;
 - 27.2.2.b. although the country or region, where a parent of a Multinational enterprise group is located for tax purposes, concluded an International Tax Treaty with Mongolia, but an agreement between competent authorities haven't been concluded within the period specified in the Article 27.2 of this Law;
 - 27.2.2.c. a system failure in a country or region, where a parent of a Multinational enterprise group is located for tax purposes is informed by a relevant tax administration of that country to a MNE located in Mongolia.

- 27.2.3. As stated in Article 27.2.2 of this Law if two or more MNEs of a Multinational enterprise group are going to prepare country-by-country report a parent MNE of the group where they belong to shall appoint one of them as a Reporting entity.
- 27.3. Appointment made in accordance with the Article 27.2.3 of this Law shall be notified to and registered at a relevant tax administration within the deadline for submission of an annual tax return.
- 27.4. Notwithstanding Article 27.2.2 of this Law a MNE located in Mongolia is not obliged to prepare country-by-county report if all following conditions are met at the same time:
 - 27.4.1. One of the conditions specified in Articles 27.2.2.a, 27.2.2.b and 27.2.2.c of this Law is met;
 - 27.4.2. Multinational enterprise group submitted a country-by-county report through its appointed reporting entity;
 - 27.4.3. the appointed reporting entity prepared/submitted??/ country-by-county report to the tax administration of a country or region, where it is located for tax purpose within the timeframe specified in Article 27.2 of this Law;
 - 27.4.4. the appointed reporting entity is required by laws of a country or region where it is located for tax purposes, to prepare country-by-country report meeting requirements of Article 27.4 of this Law;
 - 27.4.5. a country or region where the appointed reporting entity is located for tax purposes has concluded an agreement between competent authorities with Mongolia within the timeframe specified in Article 27.2 of this Law;
 - 27.4.6. a country or region where the appointed reporting entity is located for tax purposes did not inform about system failure to the tax administration of Mongolia;
 - 27.4.7. a MNE appointed as an appointed reporting entity informed about this appointment to the country or region where the MNE is located for tax purposes according to legal requirements of that country or region, and delivered the notification to the relevant tax administration according to Article 27.7.2 of this Law;
- 27.5. Country-by-country transfer pricing report shall include the following information:
 - 27.5.1. income earned, profit (loss) before tax, paid income tax, income tax debt, amount of paid-in-capital, accumulated profit, number of employees, money and consolidated information related to tangible assets other than money in each country, where the Multinational enterprise group operates;
 - 27.5.2. taxpayer's identification number, information of a country, where the MNE is residing for tax purpose, according to what country's law each MNE was incorporated in case the registered country is different from the residing country, and information on core businesses of each MNE;
- 27.6. A country-by-country report shall be reported in accordance with procedures approved by a head of central government administrative agency in charge of tax matters
- 27.7. A Taxpayer has following obligations:

- 27.7.1. MNE located in Mongolia for tax purpose must notify whether it is a parent or appointed reporting entity of a Multinational enterprise group within legal timeframe for annual tax return submission.
- 27.7.2. If MNE is not a parent or an appointed reporting entity it must notify its taxpayer identification number and information on a country or region where it is located for tax purpose to the relevant tax administration within legal timeframe for annual tax return submission.
- 27.8. A tax administration shall use the country-by-country report for risk assessment, statistics data and research work, but shall not make transfer pricing adjustment based on the report.
- 27.9. Mongolia shall keep confidentiality of information or data of a country-by-country report in accordance with international agreements where Mongolia is a part of it, and related standards.
- 27.10. Article 27.2.2 of this Law shall be adhered upon the day when Mongolian Tax Administration can automatically exchange information with a tax administration of a foreign country.

Article 28. Taxrefund

- 28.1 A tax office relevant to a taxpayer or withholder shall apply the following procedures to review and make final calculation on excess or insufficiency of tax payment against reported tax on tax returns submitted according to Articles 26.1 and 26.2 of this Law:
 - 28.1.1. refund for a tax year to a taxpayer is limited as specified in Article 22.7 of this Law;
 - 28.1.2. a taxpayer shall choose from the tax credits specified in Article 22 of this Law within the limit set in Article 22.7 of this Law;
 - 28.1.3. a taxpayer shall not exercise partially the tax credit specified in this Law;
 - 28.1.4. a tax credit for a tax year specified in Article 22 of this Law cannot be carried forward for next year.
- 28.2. If an amount of payable tax for a tax year exceeds an amount of paid tax calculated through the procedures under Article 28.1 of this Law, a relevant tax office shall notify the taxpayer and finalize the account.
- 28.3. If an amount of payable tax for a tax year is less than the amount of paid tax calculated through the procedures under Article 28.1 of this Law, a relevant tax office shall solve this excess amount in accordance with Article 49.1 of the General Law on Taxation.
- 28.4. An excess amount specified in Article 28.3 of this Law or taxpayer's refundable overpaid tax shall be refunded according to the following procedures:
 - 28.4.1. refund shall be given to a taxpayer through treasury account of a government administrative unit, where the taxpayer's relevant tax office belongs;
 - 28.4.2. a relevant tax office shall review and assess refundable tax amount, and deliver it to the treasury, where the tax office belongs to within 20 work days from the tax return submission deadlines specified in Articles 26.1 and 26.2 of this Law;
 - 28.4.3. a refund specified in Article 28.4.2 of the Law shall be made within 2nd quarter

of the following year.

- 28.5. Procedures regulating relations related to refund, supervision and accounting of a taxpayer's excess tax specified in Article 28.4 of this Law shall be approved by a Cabinet member in charge for finance and budget matters.
- 28.6. Refund shall be a part of the state budget and total refund amount shall not exceed 30 percent of that type of tax revenue of the state budget for the given year.

CHAPTER EIGHT SPECIAL TAX RELATIONS

Article 29. Simplified tax regime

- 29.1. If total sales revenue verified by previous year's tax return is less than MNT50.0 million and the relevant tax administration registered the taxpayer's request, which was submitted within the third quarter of the tax year, then the taxable income for the next year may be determined by taxpayer's total operating income.
- 29.2. A taxpayer using a simplified tax regime must be connected to the tax registration and information integrated database.
- 29.3. The following taxpayer shall not make the request specified in Article 29.1 of this law:
 - 29.3.1. A taxpayer who has qualified the conditions and requirements of the Value-Added Tax Law and been registered as a value-added taxpayer,
 - 29.3.2. A taxpayer engaged in the following activities:
 - 29.3.2.a. exploration and exploitation of minerals and radio-active mineral;
 - 29.3.2.b. producing and importing alcoholic beverages;
 - 29.3.2.c. planting, producing and importing tobacco;
 - 29.3.2.d. producing and selling oil products, and selling (wholesale and retail) and importing gasoline and diesel fuel, exploring, mining and selling petroleum.
- 29.4. A head of the government administrative organization in charge of tax matters shall approve the regulation on registration, resolution and deregistration of requests specified in Article 29.1 of this law.
- 29.5. A tax loss reported in previous years' tax returns of the taxpayer, who made a request and has been registered with the tax administration in accordance with Article 29.1 of this law, shall not be carried forward
- 29.6. A taxpayer, who made a request and has been registered with the tax administration in accordance with Article 29.1 of this law, shall be excluded from the simplified tax regime from the day the taxpayer becomes a VAT payer in accordance with the conditions and requirements stipulated in the VAT Law.
- 29.7. A taxpayer shall be excluded from the simplified tax regime from the day of engagement in the activities stipulated in Article 29.3.2 of this law.
- 29.8. Except as provided in Articles 29.6 and 29.7 of this Law, a taxpayer who made a request and has been registered pursuant to this article shall not be excluded from the simplified tax regime in the middle of a tax year.

- 29.9. Taxable income determined in accordance with the Article 29.1 of this law shall be taxed at 1 percent.
- 29.10. An entity to report and pay tax in accordance with Article 29.1 of this law shall not be viable for tax exemption stipulated in Article 21 and tax credit stipulated in Article 22, and tax paid in foreign countries as provided in Article 23 of this Law shall not be deductible from its taxable income.
- 29.11. Based on the schedule approved by the government administrative body in charge of budget and finance, the relevant tax office shall deliver to the taxpayer a schedule for monthly tax payments to be imposed for the tax year in accordance with Article 29.9 of this law.
- 29.12. As determined in accordance with Article 29.11 of this Law and the preliminary schedule a quarterly tax payment shall be paid within the 20th of the first month of the following quarter and the year's final balance to the budget within February of the following year.
- 29.13. The taxpayer, whose request was registered with the Tax Administration in accordance with Article 29.1 of this Law shall deliver its annual tax return to the tax authority within 10th of February of next year.

Article 30. Tax regulations pertaining to sale or transfer of rights through making a change to the shares and percentage of participation of final holder

- 30.1. "Final Holder" is as defined in Article 6.1.48 of the General Law on Taxation;
- 30.2. Income derived from full or partial sale or transfer of the rights to possess or use of land, and exploration and mining licenses for minerals, radio-active minerals and oil acquired in accordance with Mongolian law through sale or transfer of the shares, percentage of participation or voting rights of the Final Holder, shall be deemed as income subject to Article 10.1.2 of this law
- 30.3. The base of taxable income for sale or transfer of rights shall be determined by deducting expenses proven by the following evidences from the right's or license's value calculated in accordance with regulations stipulated in Article 30.6 of this law:
- 30.3.1. payment and fees proven by documents paid to public bodies in connection with obtaining the right;
- 30.3.2. in case of purchase or transfer from others, payment proven by documents on purchase or transfer in accordance with the purchase or transfer agreement.
- 30.4. The final taxable income from the base of the taxable income determined in accordance with article 30.3 of this law shall be determined in proportion to the value of shares, interests and voting rights sold or transferred by the ultimate owner.
- 30.5. Value of the right to use or possess a land shall be determined based on the price requirements specified in Article 38.6 of the Land Law.
- 30.6. The Cabinet member in charge of finance and budget matters shall approve the tax imposition regulation, methods for calculation value of a right to possess or use of land, and exploration and mining license for minerals, radioactive minerals and oil, and a method for calculating tax imposition on incomes specified in Article 30.4 of this law.
- 30.7. If the Final Holder specified in Article 30.1 of this law is a resident taxpayer of

Mongolia, the applicable tax shall be imposed on the highest income earned by the sale of share of the Final Holder or income from sale or transfer of rights calculated according to Articles 30.3-, 30.4, 30.5 and 30.6 of this law. Income with low amount shall be exempt from tax.

- 30.8. Change in structure of shares, percentage of participation, and voting rights between legal entities of a chain, which extends from the Final Holder to the Right Holder, through transfer of shares between these legal entities, or merge, integration or separation of these legal entities, or creating new legal entity, without making any change in total number of shares, percentage of participation and votes delegated to the Right Holder, shall not be considered as sale or transfer of rights.
- 30.9. If shares of a Right Holder, Final Holder, and legal entity, which is a part of the chain, which extends from the Final Holder to the Right Holder, are traded publicly on the foreign and domestic stock exchanges, the income from sale or transfer of the rights related to up to 20 percent of publicly traded shares, percentage of participation and voting rights of the Right Holder or the Final Holder, shall be exempt from tax for the consecutive 12 months.
- 30.10. Taxable income determined in accordance with the Article 30.4 of this law shall be taxed at 10 percent.
- 30.11. The Right Holder shall transfer the tax to be imposable in accordance with Article 30.10 of this law, to a budget within 30 days
- 30.12. Notwithstanding Article 30.11 of this law, if shares of a Right Holder, Final Holder, and legal entity, which is a part of the chain from the Right Holder to the Final Holder, are traded publicly on the foreign and domestic stock exchanges, the Right Holder shall transfer the imposed tax to a budget within July 20th for the first half of a year and February 10th of next year for the year.
- 30.13. Taxpayer shall attach tax returns specified in the Articles 30.11 and 30.12 of this law to the tax returns, which shall be submitted as specified in the Articles 26.1 and 26.2 of this law.

Article 31. Tax relations of a foreign economic entity, whose effective place of management is located in Mongolia

- 31.1. "A foreign economic entity, whose effective place of management is located in Mongolia" refers to a foreign economic entity, whose 50 or more percentage of shares or voting rights are owned directly by a related Mongolian resident taxpayer or an individual permanent resident of Mongolia, or indirectly through one or more legal entities connected with each other in a chain for certain period of time during a tax year.
- 31.2. A foreign economic entity, whose effective place of management is located in Mongolia shall be considered as resident taxpayer of Mongolia.
- 31.3. Taxable income of a foreign economic entity, whose effective place of management is located in Mongolia, earned from its operation in off-shore country or its territory, which are defined by the Law on Managing Public and Personal Interest in Public Sector and Preventing from Conflict of Interest, shall be determined in the following ways:

- 31.3.1. by total amount of income specified in Articles 9.1.2, 9.1.3, 9.1.4 and 10.1.1 of this law;
- 31.3.2. according to Article 18.3 of this Law for income specified in Article 10.1.3 of this Law;
- 31.3.3. according to Article 18.5 of this Law for income specified in Article 10.1.4 of this Law;
- 31.4. A foreign economic entity established to sell its shares or unit rights on foreign securities primary market shall not be subject to the tax relations specified in Article 31 of this law.
- 31.5. If a foreign economic entity, whose effective place of management is located in Mongolia, is a Final Holder, as specified in Article 30.1 of this Law, and transferred its shares, percentage of participation and voting rights according to Article 30 of this Law, and a Right Holder assessed and reported taxes, then the tax in foreign country shall be reduced by the amount of the assessed tax.
- 31.6. A tax shall be imposed on taxable income determined according to Article 31.3 of this Law at rates specified in Article 20 of this Law.
- 31.7. A tax assessed and imposed in foreign country on income of the foreign economic entity, whose effective place of management is located in Mongolia, shall be deducted from its due tax for the year determined according to Article 31.4 of this Law. Article 23 shall be applied for such deduction.
- 31.8. A tax imposed according to Article 31.3 of this Law and a tax return submitted to the foreign country competent authority shall be reported by the resident taxpayer or individual specified in Article 31.1 of this Law within February 20th of the following year and the account balance shall be finalized.
- 31.9. Based on the finalized account balance specified in Article 31.8 of this law, a tax imposed according to Article 31.3 of this Law shall be paid to a budget before February 10 of the following year.
- 31.10. Procedures for determining and reporting taxable income, and reporting forms for foreign economic entity, whose effective place of management is located in Mongolia, shall be approved by a Head of government administrative agency in charge of tax matters.

Article 32. Law effectiveness

32.1. This law shall be effective from January 1, 2020

SIGNATURE

LAW OF MONGOLIA

2019 (year) .. (month) ...(day)

Government House Ulaanbaatar City

PERSONAL INCOME TAX (revised version)

CHAPTER ONE| GENERAL PROVISION

Article 1. Purpose of the Law

1.1. The purpose of this Law is to regulate relations pertinent to assessment of personal income tax, payment of such taxes to the budget and filing a tax return.

Article 2. Legislation

2.1. The personal income tax (hereinafter to be referred to as "tax") legislation shall comprise of the Constitution of Mongolia, the General Tax Law, this Law and other legislative acts enacted in conformity therewith.

Article 3. Scope of Applicability

3.1. The relations for assessment of personal income tax referred to in Article 5 of this Law shall be regulated by this Law.

Article 4. Definition of Legal Terms

- 4.1. The terms used in this Law shall have the following meaning:
 - 4.1.1. "Business entity" means the entity referred to in provision 4.1.1 of the Law on Economic Entity Income Tax;
 - 4.1.1. "Intangible assets" means the assets referred to in provision 4.1.2 of the Law on Economic Entity Income Tax;
 - 4.1.3. "Micro-trader, micro-works and service provider" means an individual who runs trade, does work and renders services, passenger and freight services in an open area without having a particular work place and/or a location with a counter;
 - 4.1.4. "Income earned abroad" means income except for the income referred to in provisions 4.1.7 and 4.1.8 of this Law;
 - 4.1.5. "Herder household" means a family who herds livestock full time and main earning of which is income from the animal products;
 - 4.1.6. "Person with livestock" means an individual who owns livestock, except for those referred to in provision 4.1.5 of this Law;
 - 4.1.7. "Income earned in Mongolia" means income equivalent to those referred to in provision 6.3 of this Law;

- 4.1.8. "Income earned from origins in Mongolia" shall refer to income earned from works and services provided by members of non-residents located in Mongolia as stipulated in Paragraph 6.3 of the Law, and personal income as stipulated in Paragraph 4.1.7 of the Corporate Income Tax Law;
- 4.1.9. "Immovable property" means the property referred to in provision 4.1.9 of the Law on Economic Entity Income Tax;
- 4.1.10. "Irregular\Ad hoc activities" cover works and services that are not related to a full-time job of an individual according to the law or any contract and are not regular income source;
- 4.1.11. For the meaning of "payer of withholding tax", refer to provision 6.1.19 of the General Tax Law;

Article 5. Taxpayer

- 5.1. The citizens of Mongolia, foreign citizens or stateless persons, who earned taxable income for the current tax year or have tax duties under the laws, shall be the taxpayers under this Law.
- 5.2. The taxpayers shall be classified into permanent resident taxpayers of Mongolia and non-resident taxpayers of Mongolia.
- 5.3. A permanent resident taxpayer of Mongolia means an individual who meets any of the following conditions:
 - 5.3.1. An individual who has resided in Mongolia for 183 days or longer during 12 consecutive months;
 - 5.3.2. In case 50% or more of a taxable income of an individual is earned in Mongolia or originated/sourced in Mongolia.
- 5.4. The order provided in provisions 5.3.1 and 5.3.2 of this Law shall be applied for determining a permanent resident taxpayer of Mongolia referred to in provision 5.3 of this Law.
- 5.5. Non-resident taxpayers of Mongolia shall be individuals, who earned income in Mongolia and/or income originated/sourced in Mongolia, except for those referred to in provisions 5.3 and 5.6 of this Law.
- 5.6. A civil servant of Mongolia working abroad on assignment shall be a permanent resident taxpayer of Mongolia.
- 5.7. The time period referred to in provision 5.3.1 of this Law shall be counted by calendar days from the date of entry to Mongolia and in case of multiple entries, the time period shall be determined as a sum of days the taxpayer stayed in Mongolia.
- 5.8. Determination of the total number of days referred to in provision 5.7 of this Law shall cover the current tax year and the previous tax year.
- 5.9. Foreign citizens working in foreign diplomatic missions and consulates, United Nations and its subsidiaries in Mongolia, and their family members shall not be considered as permanent resident taxpayers of Mongolia.
- 5.10. A taxpayer may register as a resident taxpayer in Mongolia if the taxpayer has a proof of working in Mongolia for 183 days or more during 12 consecutive months under the employment contract or permit issued by an authorized organization.

5.11 The head of the public administration body in charge of tax matters shall approve procedures related to determining permanent resident taxpayers of Mongolia and non-resident taxpayers of Mongolia referred to in this Article, their registering, tax settlement and excluding them from the registry.

CHAPTER TWO TAXABLE INCOME

Article 6. Taxable Income

- 6.1. Income earned in Mongolia and originated/sourced in Mongolia as well as income earned in foreign countries by permanent resident taxpayers of Mongolia during the current tax year shall be taxed.
- 6.2. Income earned in Mongolia and originated/sourced in Mongolia as well as income earned in foreign countries by non-permanent resident taxpayers of Mongolia referred to in provision 5.5 during the current tax year shall be taxed.
- 6.3. The following income of a taxpayer shall be subject to taxation:
 - 6.3.1. Salary, wages, bonuses, incentives and other employment income similar to them;
 - 6.3.2. Income from activities;
 - 6.3.3. Property income;
 - 6.3.4. Income from property sale and transfer;
 - 6.3.5. Indirect income;
 - 6.3.6. Other income.

Article 7. Salary, wages, bonuses, incentives from employment and other income similar to them

- 7.1. Salary, wages, bonuses, incentives and other employment income similar to them shall include the following income:
 - 7.1.1. Base salary, additional wages, bonuses, incentives, vacation pay, benefits, allowances and other similar income earned in accordance with employment contract concluded with the employer;
 - 7.1.2. Allowances provided by the employer to the employees and/or employee's family members and other similar income;
 - 7.1.3. Gifts provided by the employer to the employees and/or employee's family members;
 - 7.1.4. Salary, wages, bonuses, incentives and other similar income of members of board of directors, audit committee, part-time committee, and other committees, boards and working groups;
 - 7.1.5. All types of bonuses and incentives given by the foreign and domestic economic entities, organizations, individuals and other entities and other similar income;

- 7.1.6. Wages, bonuses, additional wages, allowances and other similar income earned under the contracts concluded with the legal entities and individuals other than his/her main employer;
- 7.1.7. Meal and transportation allowances

Article 8. Income from activities

- 8.1. The following income from activities earned through activities without establishing a legal entity:
 - 8.1.1. Income from independent professional works and services;
 - 8.1.2. Income earned from proprietorship activities such as production and sale of goods, work performed, services rendered and intermediary activities.
 - 8.1.3 Income from the activities such as creation of scientific, literary, and artistic works, invention, product design and useful design works, organizing sports competitions and artistic events and participating in them and other similar income.
 - 8.1.4 Goods, works and services received from others in connection with his/her main activities
- 8.2 Income from ad hoc\irregular activities shall be included in income from activities.

Article 9. Property income

- 9.1. The property income shall include the following:
 - 9.1.1. Income from use and leasing of property;
 - 9.1.2. Income from titles/rights/royalties;
 - 9.1.3. Income from dividends;
 - 9.1.4. Income from interests;
- 9.2. Income from titles/rights/royalties shall include income referred to in provision 9.2 of the Law on Economic Entity Income Tax.
- 9.3. Income from dividends shall include income referred to in provision 9.3 of the Law on Economic Entity Income Tax.
- 9.4. Income from interests shall include income referred to in provision 9.4 of the Law on Economic Entity Income Tax.

Article 10. Income from sale and transfer of property

- 10.1. Income from property sale and transfer shall include the following income:
 - 10.1.1. Income from sale and transfer of immovable property;
 - 10.1.2. Income from sale and transfer of land titles for its possession and use and other intangible assets;
 - 10.1.3. Income from sale of movable property;
 - 10.1.4. Income from sale of shares, securities and other financial instruments;
- 10.2. Income from the sale and transfer of intangible assets shall include income of a taxpayer from transfer of the ownership title to intangible assets that are not belong to him/her to others according to the law.

Article 11. Indirect income

- 11.1. The following income from goods, works and services provided by the employer in addition to salary, wages, bonuses and incentives and that are not directly related to his/her official duties shall be considered as indirect income
 - 11.1.1. Free of charge or discounted transportation services;
 - 11.1.2. Payments for utilities, renting, lodging costs and fuel cost payments;
 - 11.1.3. Payment for entertainment;
 - 11.1.4. Payment for made services, driver, gardener and other services costs;
 - 11.1.5. Payment for settlement of debts to the employer or other entities;
 - 11.1.6. Difference between the commercial loan interest and the lower interest loans provided to her/him;
 - 11.1.7. Voluntary insurance premium paid by the employer except for those referred to in-provision 11.2.7 of this Law;
 - 11.1.8. Payment of the tuition fee of the family member;
 - 11.1.9 Payment for the resettlement (cost of moving in and out of Mongolia)
 - 11.1.10 Allowance for hardship (for living in continental climate)
 - 11.1.11 Other income similar to those referred to in provisions 11.1.1–11.1.10 of this Law.
- 11.2. The following indirect income granted by the employer to the employee to improve the work environment and work conditions for performing of his/her duties shall not be subject to taxation:
 - 11.2.1. All employees are provided with food on the same conditions in cafeteria, coffee shop and/or break room;
 - 11.2.2. Provision of recreation facilities and other services and the unified two-way transportation to/from workplace;
 - 11.2.3. The difference between the commercial loan interest and the loans with lower interest provided to the employees for purchase and/or construction of accommodation/apartments/houses;
 - 11.2.4. Allowance and support paid to the medical organizations;
 - 11.2.5. Business trip expenses paid by the employer;
 - 11.2.6. Costs of labor safety clothes and uniforms, poison neutralizing drinks, and other similar supplies provided by the employer under the legislation;
 - 11.2.7. The premiums paid by the employer for voluntary life, health, accidents and professional liability insurance in relation to employment.
- 11.3. Indirect income referred to in provision 11.1 of this Law shall be determined as the amount of expenses incurred by the employer to provide this income.

Article 12. Other income

- 12.1. Income referred to in provision 6.3.6 of this Law shall include the following income:
 - 12.1.1. Income from prizes and awards for art contests and sport competitions, and Naadam festivities and other income similar to them;
 - 12.1.2. Income from trivia\puzzles, bets and lottery prizes;
 - 12.1.3. Income from micro-trading, micro-works and micro-services;

Article 13. Determination of the taxable income

13.1. When determining amount of taxable income, the tax exempted income shall be deducted.

CHAPTER THREE DETERMINATION OF TAXABLE INCOME

Article 14. Determination of taxable income from salary, wages, bonuses, incentives and other similar income

14.1. When determining amount of taxable income from salary, wages, bonuses, incentives and other similar income referred to in provision 7.1 of this Law the amount paid for social and health insurance contributions shall be deducted.

Article 15. Determination of taxable operational income

- 15.1. The taxable operational income shall be determined by deducting expenses that satisfy the conditions and requirements referred to in provision 13.1, adhering to the principle referred to in provision 13.2 and complying with the provisions 14-17 of the Law on Economic Entity Income Tax.
- 15.2. In the case the taxpayer spent the deductible expenses referred to in provision 15.1 of this Law for his/her personal needs, then these expenses shall not be deducted from the taxable income.
- 15.3 In the case the taxpayer used his/her produced goods, works and services for his/her own and/or his/her family needs, the proportion of such operational expenses for such goods, works and services shall not be considered as deductible expenses.
- 15.4. In the case the taxpayer co-used machinery, equipment and building for his/her and/or family needs at the same time, then the operational expenses shall be proportionately calculated and deducted from the taxable income.
- 15.5. Salary and wages paid to the family members shall be calculated proportionately to the social insurance contributions paid and included in the deductible expenses.
- 15.6. In the case the individual, who filed a tax return with taxable income of up to MNT 50.0 million in the previous year, submits a request and the local tax administration registers the request, then taxable operational income can be determined as the total amount of operational income.
- 15.7. A taxpayer, who satisfies the conditions and requirements referred to in the Law on Value Added Taxes, is registered as a value added tax withholder and is entitled to enjoy the tax credits and exemptions under this Law, shall not submit a request referred to in provision 15.6 of this Law.
- 15.8. The procedures on registration of requests referred to in provision 15.6 of this Law, their processing and removal from the registry shall be approved by the head of the public administration body in charge of tax matters.

Article 16. Determination of taxable income from property income

- 16.1. The taxable income from property shall be determined as follows:
 - 16.1.1. The difference after deduction of the documented expenses related to use by others or lease of the property from the total income from its use by others and leasing;
 - 16.1.2. The total amount of income from titles/rights/royalties;
 - 16.1.2. The total amount of income from dividends;
 - 16.1.4. The total amount of interest income.
- 16.2. In the case an economic entity with taxpayer's contributed capital is dissolved, the original price paid for shares and expenses for contribution shall be deducted from the value of shares possessed by the taxpayer and the amount of income calculated proportionately to the originally contributed capital.

Article 17. Determination of taxable income from sale and transfer of property

- 17.1. Taxable income from sale and transfer of property shall be determined as follows:
 - 17.1.1. The total amount of income from sale of immovable property referred to in provision 10.1.1 of this Law;
 - 17.1.2. In the case of sale and/or transfer of property referred to in provisions 10.1.2 and 10.1.3 of this Law the outstanding amount of income from sale or transfer of property after the deduction of the expenses proved by the following documents:
 - 17.1.2. a. The documented expenses occurred in connection to the payment to the government body in connection with obtaining the title/rights;
 - 17.1.2. b. The documented expenses occurred in connection to the payments for purchase and transfer of property;
 - 17.1.3. The outstanding amount of income from the sale of shares, securities and other financial instruments referred to in provision 10.1.4 of this Law after deduction of the purchase price of such shares, securities and other financial instruments and any other documented expenses incurred in connection with the purchase of such shares, securities and other financial instruments.
 - 17.1.4. In case of sale and transfer of co-owned shares and securities, after the determination of the outstanding amount after the deduction as referred to in provision 17.1.3 of this Law, the value of the portion allotted to the taxpayer.
- 17.2. In case of determining the value of land titles, rights to use the land and a taxable income from those, the methodology referred to in provision 30.6 of the Law on Economic Entity Income Tax shall be adhered to.

Article 18. Determination of taxable income from indirect income

18.1. The taxable indirect income referred to in Article 11 of this Law shall be the total amount of such income.

Article 19. Determination of taxable income from other income

- 19.1. The taxable income from other income referred to in Article 12 of this Law shall be determined as follows:
 - 19.1.1. Taxable income from prizes and awards of art contests and sport competitions and the Naadam festivities and other income similar to them shall be the total amount of such income;
 - 19.1.2. Taxable income from trivia, puzzles, betting and lottery prizes shall be the total amount of such income;
- 19.2. A taxpayer, who runs a micro-trading and provides micro-services, may request on his/her own to consider his/her income for the current year as income referred to in the Article 8 of this Law for the tax assessment, payment and file the tax return.

Article 20. Determination of taxable income of the non-resident taxpayers of Mongolia from his/her income earned in Mongolia and originated/sourced from Mongolia

- 20.1. The taxable income of the non-resident taxpayers of Mongolia from his/her income earned in Mongolia and sourced from Mongolia shall be the total amount of such income.
- 20.2. Income referred to in provision 20.11 of this Law and provided by the resident of Mongolia to the individual who arrived and worked in Mongolia on behalf of a non-resident of Mongolia under the business contract between the resident of Mongolia and the non-resident of Mongolia shall be reflected in the contract by the parties.
- 20.3. In case of failure to specifically reflect the conditions referred to in provision 20.2 of this Law in the contract, the taxable income shall be determined as a total amount of expenses related to the individual's arrival and work in Mongolia that are included in the calculation of the contract amount.

CHAPTER FOUR TAX RATES

Article 21. Tax rates

- 21.1 The amount of income determined according to Articles 14, 18 of this Law shall be taxed at the rate of 10 percent.
- 21.2 The income referred to in the following articles, sections and provisions shall be taxed at the following rates:
 - 21.2.1 The income referred to in provisions 17.1.1of this Law shall be taxed at the rate of 2 percent.
 - 21.2.2 The income referred to in provision 19.1.1 of this Law shall be taxed at the rate of 5 percent.
 - 21.2.3 The income referred to in provision 19.1.2 of this Law shall be taxed at the rate of 40 percent.

- 21.2.4 The income referred to in Article 16 and provisions 15.1, 17.1.2, and 17.1.3 of this Law shall be taxed at the rate of 10 percent.
- 21.2.5 The income referred to in provision 20.1.4 of this Law shall be taxed at the rate of 20 percent.
- 21.3 The total income referred to in provision 15.6 of this Law shall be taxed at a rate of 1 percent.
- 21.4 The aimag and capital city Citizens Representatives' Khurals shall set the amount of a monthly income tax for the individuals who earns the income referred to in the provision 12.1.3 of this Law within the following limits:
 - 21.4.1 For the individuals engaged in trade and services in an open area without being based at a work place and/or a certain location equipped with counter the minimum amount of tax shall be equal to 1 percent of the minimum wage and the maximum amount shall be equal to 50 percent of the minimum wage;
 - 21.4.2 For the individuals engaged in passenger or freight transportation services the minimum amount of tax shall be 5 percent of the minimum wage and the maximum amount of tax shall be equal to the minimum wage;
- 21.5. Notwithstanding those specified in 21.2.4 and 21.2.5 of this law, taxes shall be imposed on publicly tradable debt instruments and stocks in the foreign or local primary and secondary securities markets and stocks of taxpayer residing in Mongolia and interest income and dividend income amount earned by unit right holding taxpayer at the rate of 5 percent.

CHAPTER FIVE TAX CREDIT AND EXEMPTION

Article 22. Income to be Tax Exempted

- 22.1. The following income shall be tax exempted:
 - 22.1.1. Pension, benefits, payments, allowances, compensations and one -time grants paid as specifically provided in the legislation;
 - 22.1.2. Income of an individuals with disabilities;
 - 22.1.3. Grants provided by the international organizations, foreign governments, legal entities and citizens to the Government of Mongolia, the local organizations, legal entities and citizens in the events of disaster;
 - 22.1.4. Income of herder households and persons with livestock from only their livestock;
 - 22.1.5. Payment, interest and gain on bonds issued by the Government and the Development Bank of Mongolia;
 - 22.1.6. Income earned from transfer of certificates on land title and right to possess and/or use land free of charge between the parties referred to in provision 3.1.4 of the Family Law;
 - 22.1.7. Income from incentives for value added tax;
 - 22.1.8. Salary and additional wages of individuals referred to in provision 5.9 of this Law;

- 22.1.9. Income earned abroad by foreign citizens and their family members referred to in provision 22.1.8 of this Law.
- 22.2. An individual, who pays taxes at the rates per provided in provisions 21.3 and 21.4 of this Law, shall not enjoy the exemptions referred to in this Article.

Article 23. Tax credits

23.1 The tax credits shall be provided to a taxpayer on an annual tax to be imposed on his/her income referred to in provisions 7.1.1-7.1.5, and 7.1.7 of this Law as follows:

Amount of annual taxable income (in MNT)	Amount of tax	
	credits (in MNT)	
0- up to 6,000,000	240,000	
6,000,000- up to 12,000,000	216 000	
12,000,000- up to 18,000,000	192 000	
18,000,000- up to 24,000,000	168 000	
24,000,000- up to 30,000,000	144 000	
30,000,000- up to 36,000,000	120 000	
36,000,000 and higher	-	

- 23.2. The tax to be imposed on income earned by a permanent resident taxpayer of Mongolia from producing or planting the following products only shall be reduced by 50 percent:
 - 23.2.1. grains;
 - 23.2.2. potatoes, vegetables and their seeds;
 - 23.2.3. fruits, berries, their seeds and seedlings;
 - 23.2.4. fodder plants;
 - 23.2.5. tree seedlings.
- 23.3. In the case a citizen of Mongolia has purchased under mortgage his/her apartment for the first time for private residence, then the taxpayers shall enjoy a tax credit equal to the amount paid for difference between the highest mortgage loan interest rate determined by the Government of Mongolia and the discounted mortgage loan interest rate.
- 23.4. In the case a citizen of Mongolia has built or purchased his/her home for the first time for his/her private residence only using his/her own taxed income and a loan provided by the bank and other financial institutions, then the taxpayers shall enjoy a tax credit on income equal to the amount spent on building the home or purchase of apartment, and the credit amount shall be up to MNT 6 million.
- 23.5. In the case a child was born, and/or adopted by and/or a step child of a taxpaying citizen of Mongolia and/or a child under care and support established by the guardian is enrolled in a foreign or domestic university, college, professional or technical school as a student then the taxpayer shall enjoy a tax credit on income equal to the amount of the documented tuition fee paid in the current tax year during the study period for the child's first undergraduate degree and/or diploma profession.
- 23.6. A citizen of Mongolia, who pays taxes from his/her employment income during his/her study, and furthermore pays tuition fee to attend his/her first university,

college or professional and technical school, shall enjoy the tax credit referred to in provision 25.5 of this Law.

- 23.7. A taxpayer shall enjoy a tax credit on income in the current year equal to the documented amount paid for the purchase of solar, wind, geothermal and other renewable energy equipment, equipment for production of semi-coke, gas and liquid fuel from coal, stove/ furnace that meets the requirements of standards, low pressure furnace, insulation materials, electric or gas heater for his/her personal needs.
- 23.8. A taxpayer shall enjoy a tax credit on income in the current year equal to the documented donation for conservation and restoration of cultural heritage.
- 23.9. The following income of a taxpayer shall be eligible for tax credit:
 - 23.9.1. donor compensation;
 - 23.9.2. Insurance payout;
 - 23.9.3. State award of Mongolia, Government awards, rewards for People's and Emeritus titles of Mongolia, and awards for scientific discoveries.
- 23.10. For Mongolian citizens residing in remote aimags and soums far more than 500 km from the capital city of Ulaanbaatar, and registered with the local registry, taxpayers' income specified in Subparagraph 6.3.2 of the Law shall be discounted by 50%, and 90% in remote aimags and soums, isolated from Ulaanbaatar more than 1000 km.
- 23.11. A list of equipment, and supplies specified in Paragraph 23.7 of the Law shall be approved by the Government.
- 23.12. An individual, who shall pay tax at the rates as per provided in provisions 21.3 and 21.4 of this Law, shall not enjoy the tax credits referred to in this Article.
- 23.13. A taxpayer shall enjoy one selected tax credit out of those referred to in provisions23.3 and 23.4 of this Law
- 23.14. Tax credit shall not be exceeded by the tax payment reported in the last reporting year and shall be refunded in accordance with Article 28 other than those specified in Articles 23.1 and 23.9 of the Law.
- 23.15. The head of the state administrative body in charge of taxation shall approve the procedures for credits set forth in Paragraph 22.1 of the Law and the credit procedures specified in this paragraph.

Article 24. Deduction of Taxes Imposed in Foreign Countries from the Payable Taxes

- 24.1. Taxes imposed on a permanent resident taxpayer of Mongolia in a foreign country shall be deducted from the taxes payable by the taxpayer in the current tax year.
- 24.2. The amount of the taxes to be deducted according to provision 24.1 of this law shall not exceed the taxes payable by the taxpayer in Mongolia in the current tax year
- 24.3 Article 23 of the Law on Economic Entity Income Tax shall be applied to the deduction of taxes imposed in foreign countries from the payable taxes as per provided in provision 24.1 of this Law.
- 24.4 The procedures on confirmation of the payment of taxes imposed in foreign countries and the deductions from the taxes payable shall be approved by the head of the public administration body in charge of taxation.

CHAPTER SIX

TAX ASSESSMENT, PAYMENT TO THE BUDGET, FILING TAX RETURN, TAX DEDUCTION AND TAX REFUND

Article 25. Tax Withholding and Its Payment to the Budget

- 25.1. A tax withholder referred to in provision 4.1.11 of this Law shall adhere to the following procedures in tax imposition:
 - 25.1.1. To impose tax on amount of income referred to in Articles 14 and 18 of this Law at the rate referred to in provision 21.1 of this Law and transfer it to the relevant budget;
 - 25.1.2. To impose tax on amount of income referred to in provisions 16.1.2-16.1.4 of this Law at the rate referred to in provision 21.2.4 of this Law and transfer it to the relevant budget;
 - 25.1.3. To impose tax on amount of income referred to in provision 17.1.1 of this Law at the rate referred to in provision 21.2.1 of this Law and transfer it to the relevant budget;
 - 25.1.4. To impose tax on amount of income referred to in provision 19.1.1 of this Law at the rate referred to in provision 21.2.2 of this Law and transfer it to the relevant budget;
 - 25.1.5. To impose tax on amount of income referred to in provision 19.1.2 of this Law at the rate referred to in provision 21.2.3 of this Law and transfer it to the relevant budget;
 - 25.1.6. To impose tax on amount of income referred to in provision 20.1 of this Law at the rate referred to in provision 21.2.5 of this Law and transfer it to the relevant budget;
 - 25.1.7. To impose tax on publicly tradable debt instruments and stocks in the foreign or local primary and secondary securities markets and stocks of taxpayer residing in Mongolia and interest income and dividend income amount earned by unit right holding taxpayer at the rate referred to in provision 21.5 of this law and transfer it to the relevant budget.
- 25.2. The banks and the financial institutions each time when they calculate the interest on the amount in the taxpayers current and savings accounts shall have the obligation of the tax withholders and shall withhold the taxes and transfer it to the relevant budget;
- 25.3 The tax withholder shall deduct the tax exemption referred to in provision 22.1.2 of this Law based on the relevant evidence–when imposing a tax on income of an individual with disabilities.
- 25.4. The tax withholder shall record electronically or in their income and tax books the taxpayer's identification number, amount of paid income to each individual each time when such payment is made, amount of tax imposed on and withheld from such income and submit accrued amount of withholding taxes to the local tax administration on a quarterly basis.
- 25.5. A tax withholder when applying the tax credit referred to in the provision 24.1 of this Law shall divide the taxable income and the tax credit equally between 12 months and shall provide such tax credit to the tax payer every month.

25.6 A tax withholder shall transfer the tax withheld from taxpayer's income to the relevant budget within 10th of the following month unless otherwise referred to in provision 25.2 of this Law.

Article 26. Self-Assessment of Tax and Its Payment to Budget

- 26.1. The taxpayer shall assess his/her taxable income accurately according to this Law and pay the tax to the relevant budget within the following due dates:
 - 26.1.1. The tax on income determined as per provisions 15.1, 16.1.1, 17.1.2, 17.1.3 of this Law shall be assessed each time at the rate referred to in provision 21.2.4 of this Law and paid within 15th of the following month;
 - 26.1.2 The tax on income referred to in provisions 16.1.2-16.1.4 of this Law and earned in the current tax year by the permanent taxpayer of Mongolia in foreign countries shall be assessed at the rate referred to in provision 21.2.4 of this Law and paid within 15th of February of the following year.
 - 26.1.3 The tax on income referred to in provision 17.1.1 of this Law and earned in the current tax year by the permanent taxpayer of Mongolia in foreign countries shall be assessed at the rate referred to in provision 21.2.1 of this Law and paid within 15th of February of the following year.
 - 26.1.4 The tax on income referred to in Articles 14, 18 of this Law and earned in the current tax year by the permanent taxpayer of Mongolia in foreign countries shall be assessed at the rate referred to in provision 21. 1 of this Law and paid within 15th of February of the following year.
 - 26.1.5 The tax on income referred to in provision 19.1.1 of this Law and earned in the current tax year by the permanent taxpayer of Mongolia in foreign countries shall be assessed at the rate referred to in provision 21.2.2 of this Law and paid within 15th of February of the following year.
 - 26.1.6 The tax on income referred to in provision 19.1.2 of this Law and earned in the current tax year by the permanent taxpayer of Mongolia in foreign countries shall be assessed at the rate referred to in provision 21.2.3 of this Law and paid within 15th of February of the following year.
 - 26.1.7 The tax on income determined as per provision 15.6 of this Law shall be assessed at the rate referred to in provision 21.3 of this Law and paid within 15th of February the following year;
- 26.2. The local authority, specified in provision 21.4 of this Law, which issues permits for micro-trading, works and services shall issue the permits along with the certificates, collect the taxes and transfer to the relevant budget.
- 26.3. An individual running passenger and freight services referred to in provision 4.1.3 of this Law shall carry his/her permit and certificate as proof of the tax payment with him/herself or put such document in a visible place in his/her vehicle.
- 26.4. The template of a certificate to be used as a proof of tax payment by the taxpayer, referred to in provision 26.2 of this Law, shall be approved by the head of the public administration body in charge of tax matters.
- 26.5 In the case a taxpayer who has not been obliged to file a tax return according to this law files an annual tax return on his own wish then he/she shall send the tax return to

the respective tax administration by February 15th of the following year and may make the final annual settlement.

26.6. Taxpayer shall pay taxable income as defined in Articles 14 and 18 of the Law who are employed in an entity located in Mongolia and who are not resident in Mongolia and pay the relevant tax to the budget by the 10th of the following month and submit the tax report on February 15 of the following year, and submit to the tax authority by cumulative amount.

Article 27. Due Dates for Filing Tax Returns

- 27.1. The tax withholder shall file its quarterly tax return on tax assessed on and withheld from income determined as per provided in Article 14, provisions 14, 16.1.2-16.1.4, 17.1.1, Article 18 and provisions 19.1.1, 19.1.2, 20.1 of this Law and send to the relevant local tax administration by the 20th of the first month of the following quarter and its annual tax return on an accrued basis by 15th of February of the following year.
- 27.2. The taxpayer shall file the tax return on tax assessed on income determined as per provisions 15.1, 15.6, 16.1.1, 17.1.2, 17.1.3 of this Law and send to the relevant local tax administration on an accrued basis by 15th of February of the following year.
- 27.3. The local authority which issues the permits for micro trading, works and services shall submit its report on collected taxes as per provided in provision 26.2 of this Law to the relevant local tax administration by 15th of February of the following year.
- 27.4. A permanent resident taxpayer of Mongolia shall file his/her tax return on taxes assessed on income earned in foreign countries referred to in Article 14, provisions 16.1.2, 16.1.3, 16.1.4, 17.1.1, Article 18 and provisions 19.1.1, 19.1.2 of this Law on an accrued basis and send to the local tax administration by 15th of February of the following year.
- 27.5 A taxpayer who is subject to tax credits and exemptions except for those referred to in provisions 22.1.2, 22.1.4, 22.1.7, and 23.1 of this Law shall be obliged to file a tax return and such tax return shall be the basis for tax credits and exemptions.
- 27.6 A taxpayer may file a tax return for the current tax year prior to the end of such tax year and make tax settlement in advance.

Article 28. Tax Refund

- 28.1. The relevant local tax administration shall verify and finalize the calculation and settlement of overpayment or underpayment of taxes based on the tax returns filed by the taxpayers and tax withholders as per provided in provisions 27.1, 27.2, 27.4, 27.5, 27.6 of this Law according the following procedures:
 - 28.1.1. The amount of tax refund for the current tax year to be paid to a taxpayer shall be limited as per provided in provision 23.14 of this Law;
 - 28.1.2. The taxpayer shall enjoy first the tax credit referred to in provision 23.1 of this Law first;
 - 28.1.3. The taxpayer shall select and enjoy the tax credits except for the tax credits referred to in provision 23.1 of this Law within the limit referred to in provision 28.1.1 of this Law;

- 28.1.4. Taxpayer shall not enjoy tax credits referred to in this Law partially;
- 28.1.5. The tax credits except for the tax credits referred to in provision 23.4 of this Law shall not be carried over to the next tax year.
- 28.2. In the case the tax amount paid by a taxpayer for the current tax year is less than the amount of the tax payable that is calculated according to the procedures referred to in provision 28.1 of this Law, then the local tax administration shall notify the taxpayer and make the final settlement and let the taxpayer to pay the difference.
- 28.3. In the case the tax amount paid by a taxpayer for the current tax year exceeds the amount of the tax payable that is calculated according to the procedures referred to in provision 28.1 of this Law, then excess amount shall be resolved as per provided in provision 49 of the General Tax Law.
- 28.4 The refund of the overpaid tax referred to in paragraph 28.3 of this Law to the taxpayer shall take place in accordance with the following procedures:
 - 28.4.1. The tax refund shall be paid to the taxpayer through the treasury account of the local administrative unit to which the tax administration affiliated;
 - 28.4.2. The local tax administration shall review and determine the amount of the tax refund within 20 business days after the due date for filing tax returns referred to in Article 27 of this Law and transfer it to the relevant local treasury unit
 - 28.4.3. The tax refund referred to in provision 28.4.1 of this Law shall be paid within 2nd quarter of the following year.
- 28.5. The procedures regulating the relations pertaining to the refund of the tax overpaid by the taxpayer as per provided in provision 28.4 and its review shall be approved by the Member of the Cabinet in charge of tax matters.

CHAPTER SEVEN MISCELLANEOUS

Article 29. Effectiveness of the Law

29.1. This law shall become effective from January, 1, 2020.

SIGNATURE

Appendix to Order 307 of the Minister of Finance by December 31, 2019

REGULATION ON SEIZURE, CONFISCATION, STORAGE, PROTECTION OF THE ASSETS OF A TAXPAYER WITH TAX ARREARS

One. General Provisions

- 1.1. The purpose of this regulation is to regulate relations related with seizing movable and immovable property, securities, receivables, bank accounts, intangible assets (hereinafter referred to as "assets") of the debt taxpayer's for debt settlement.
- 1.2. The state tax inspector shall establish the taxpayer's assets status in debt before performing the seizure procedure, in accordance with Article 59 of the General Tax Law.
- 1.3. If the taxpayer did not pay the tax in full in the time periods specified in Articles 55.1.1, 55.1.2 and 55.1.3 of the General Tax Law, or the taxpayers also encountered the circumstances set forth in article 55.1.4 of the law, the tax authority shall be grounds to carry out the asset seizure procedure.
- 1.4. As stated in Article 53 of the General Taxation Law, seizing of assets during the grace period shall not be performed where a grace period has been granted for paying tax debt
- 1.5. The tax administration shall adhere to article 60 of the General Tax Law when collecting tax debts or seizing assets from taxpayer's debt.
- 1.6. Police organization shall provide support in case circumstances stipulated in the section 19.3 of the General Taxation Law on seizing and confiscation of assets.
- 1.7. The seizure, confiscation, storage and protection of assets shall be carried out by the competent tax administration of the debtor, and the debt settlement from the seized asset may be transferred to the tax authority where the seized or to be seized assets are located.

Two. Procedures for property seizure

- 2.1. Seizure the assets of a taxpayer with tax arrears shall be carried out by the following procedure:
 - 2.1.1. "Tax claim" shall be delivered to the taxpayer in debt;
 - 2.1.2. A tax pre-claim shall be delivered for payment in case circumstances stipulated in Article 54.1 of the General Tax Law.
- 2.2. Debt taxpayer's assets shall be determined as belonging to his ownership or possession as follows:
 - 2.2.1. a taxpayer shall own movable property and in case of securities, it shall be registered with an authorized body as a possesser or owner of the security;

- 2.2.2. regarding immovable property, automobile, aircraft, license issued by an authorized body, or a property with possession and use right, copyright and other intangible assets, it shall be registered in the name of the taxpayer in debt to the relevant registration authority;
- 2.2.3. for non-registered assets, the reality and use of the assets shall be certain to belong to the taxpayers who are in debt;
- 2.2.4. Shares owned by a individual or legal entity shall be registered in the charter of a legal entity or in the registration authority in the name of the taxpayer in debt ;
- 2.2.5. Regarding receivables, loan agreement, debt voucher, savings ledger, financial statements, valid arbitration and court rulings, resolutions, licenses and other documents shall indicate that the receivables belong to the taxpayer;
- 2.3. Even if the asset register is not directly related to the taxpayer in debt, but the asset will be considered as taxpayer-owned assets if it is clear that the assets will be transferred to the taxpayer under the sales agreement, purchase, gift, trade, and investment;
- 2.4. The tax administration shall decide the to be seized assets, taking into account the cost of tax debt collection and the liquidity of the assets, and upon request of the taxpayer, the following circumstances shall be considered:
 - 2.4.1. shall not interfere with third party rights;
 - 2.4.2. easy to monetize;
 - 2.4.3.easy to store, or confiscate;
- 2.5. Seizing of taxpayers' assets or settlement tax debts from seized assets to other tax authorities shall be carried out by the order of the head of the competent tax administration of that taxpayer.
- 2.6. While seizing assets, the state tax inspector shall prepare documents such as letter of notification on seizure, Act on seizure, Seizing notes.
- 2.7. The state tax inspectors shall carry out the seizing procedure on taxpayer's assets and, if necessary, working group of 2-5 members shall be appointed by the order of the head of that tax administration.
- 2.8. The tax administration will notify the taxpayer in debt about the beginning of the seizure not later than five business days in person or by mail, in electronic form.
- 2.9. Seizing of assets, except for the taxpayer's bank accounts (which are subject to tax debt non-dispute settlement), shall be performed as follows:
 - 2.9.1. seizure shall be carried out under presence of the taxpayer or its legal representative, accountant and independent witnesses;

- 2.9.2. compile an act of seizure of assets and include in the act the name of the taxpayer in debt, address and location, the period related to the tax deliquency, the type of tax, the term and amount of the tax due, the type, quantity and nature of the seized assets, and the date of the act;
- 2.9.3. the tax authority shall occupy, stating the terms of disposal, storage, protection and use of seized assets, if necessary, not to be used by sealing, locking, or entrusted to the owner on the condition of their use;
- 2.9.4. in case the person specified in the Article 2.9.1 of this regulation has the obligation to prove the process of seizing the assets, sign the act on seizure, in case of refusal, attach the explanation on the reasons of refusal to the act;
- 2.10. The possessor of the seized assets shall be obliged not to lose, sell, transfer to others, ensure completeness, not remove seal and lock without the consent of the tax authorities, and the state tax inspector shall explain to the taxpayer about liability, in case of failure to fulfill the obligation.
- 2.11. The tax administration shall notify the authorized owner of the assets in writing in case of sealing the following assets:
 - 2.11.1. Holders of property rights to pledge and rights to third parties;
 - 2.11.2. To the registered authorized person for seizing the assets notized in advance, in accordance with Article 185 of the Civil Code;
- 2.12. The tax administration shall notify the relevant registration authority within three business days after the actions taken to seizing the taxpayer's assets and related documents, and register in the tax registration and information database.
- 2.13. The tax administration shall seize the assets, other than those specified in Article 61 of the General Tax Law, which are owned and possessed by the taxpayer with debt.
- 2.14. Unless required, seizure shall be performed within business hours.

Three. Seizure of movable properties and securities, sequestration of cash and recovery of tax arrears

- 3.1. The tax administration shall perform the following actions when seizing assets and securities:
 - 3.1.1. the tax authority shall occupy the assets and take measures to restrict the taxpayer's right to dispose, possess and use the asset;
 - 3.1.2. prepare an act of seizing the asset and deliver the copy to the taxpayer with debt;
 - 3.1.3. notify the third party in writing of transferring the assets owned by third parties, except for the taxpayer's family member or related parties, to the tax authority;

- 3.1.4. person who has the obligation to transfer the assets and commenced agreement on lease agreement, use of assets or income with taxpayer in debt, can choose on of the conditions using of the property, making profit for a limited period of three months without terminating or terminating the agreement;
- 3.1.5. The tax administration may remain the seized assets for storing, allowing or without allowing to be used by debt taxpayers or third parties who own the assets;
- 3.1.6.In case the tax administration does not remain the seized assets for storing to the taxpayer or the third party who owns the assets, the tax authorities shall transport, signing in the act of seizure, and deliver the copies to the person who owns the assets.
- 3.2. If cash is discovered during determination of taxpayer's assets, state tax inspector shall make a note and submit immediately or within 24 hours to the tax revenue account by the taxpayer's debt amount and receipt shall be submitted to the taxpayer.
- 3.3. The tax administration shall deliver the securities seizing act to the legal entity engaging in registration, storage, clearance, and settlement of securities, or to the related organizations within three business days after the decision to seize.

Four. Seizure of receivables

- 4.1. Receivables include wages, dividends, receivables from third parties, or rights to claim assets that can be monetized, or other equivalent sources.
- 4.2. Depending on the size of the tax debt, it shall fully or partially seized and the following procedure shall be followed:
 - 4.2.1. The seizure of receivables shall be deemed to have started with the submission of a Seizure notification to third parties in accordance with Article 64 of the General Taxation Law;
 - 4.2.2. the period of seizing shall last from the date of delivery of the seizure notification to complete collection of tax debt;
 - 4.2.3. seizing wages shall adhere to section 64.6 of the General Tax Law;
 - 4.2.4. If the taxpayer with debt has paid the tax debt in full, the tax authority shall notify the third party in writing and electronically within three working days of the cancellation of the seizure.
- 4.3. The third party responsible for the deduction shall make a deduction from the payment according to the payment schedule provided on the seizure notification and transfer it to the tax revenue account within three working days after the deduction.
- 4.4. If the taxpayer with the debt is released, fired or otherwise unable to deduct the tax debt, it shall be notified to the tax authority within seven working days.

4.5. It is prohibited to perform actions specified in 64.7 of the General Tax Law during the seizing period of receivables.

Five.Collection tax debt on a non-disputable basis (forced collection)

- 5.1. The tax administration shall adhere to the following procedure when collecting tax debts by seizing taxpayer's bank account:
 - 5.1.1. bank account refers to the taxpayer's savings and current account opened with the commercial bank;
 - 5.1.2. If the taxpayer has not paid the tax debt in full within the period, specified in Article 55.1 of the General Tax Law, the seizure notification shall delivered to the bank on the issuance of the tax debt from the taxpayer's bank account limited by the amount of unpaid tax;
 - 5.1.3. seizure notification shall be prepared, in accordance with the approved form and content, and notify the taxpayer, indicating that full or partial termination of the current account transactions in the taxpayer's bank;
 - 5.1.4. The seizure notification shall be signed and stamped by the head of the tax administration performing the seizure;
 - 5.1.5.The seizure notification may be delivered electonnically.
- 5.2. The term of the seizure shall last from the delivery of the notice to the full collection of tax debt.
- 5.3. A commercial bank that has received a seizure notice shall choose the highest interest income per capita, in the implementation of Article 63.1.3 of the General Taxation Law, transferring tax debts from two or more accounts;
- 5.4. If the taxpayer's bank account balance is not enough to pay the tax debt specified in the seizure notification, the taxpayer's account shall be seized and transferred to treasury account from the seized account each time income is received.
- 5.5. The bank will notify the tax authority if it has fully complied with the requirements indicated on the seizure notification.
- 5.6. The tax administration shall notify the bank and taxpayers of canceling the seizure notification within three business days based on the bank notification specified in 5.5 of this regulation.
- 5.7. If the taxpayer paid the tax debt in a manner other than the non-disputable procedure, the tax authority shall notify the bank and taxpayers within three business days from the date of the tax debt paid and cancel the seizure.
- Six. Seizure of the immovable properties, aircrafts, road vehicles and construction equipment

- 6.1. Seizing real estate, aircraft, cars and construction equipment shall adhere to provisions of Article 65 of the General Tax Law and Article 2 of this Regulation.
- 6.2. The tax administration shall notify the registration authority within three business days of seizing the immovable property and register the seizure.

Seven. Seizure of the intangible assets

- 7.1. Intangible assets include the assets specified in 84.5 of the Civil Code.
- 7.2. Seizing of intangible assets shall be implemented in accordance with the provisions of Article 66 of the General Tax Law and Article 2 of this Regulation.
- 7.3. The tax authority shall notify the relevant registration authority within three business days of seizing the intangible assets and register the seizure.
- 7.4. The tax administration shall deliver the letter of notification to a third party, who use the intangible asset to be seized, every time when seize.

Eight. Storage and protection of seized assets

- 8.1. The seized assets may be kept by the taxpayer who is in debt or third parties who possesses the assets.
- 8.2. Seized and confiscated by state tax inspector movable property may be stored in the taxpayer, his family member, other persons who have concluded a contract, or in a special tax office premises.
- 8.3. The person specified in 8.1 and 8.2 of this regulation shall be obliged to keep the assets and protect their integrity and it shall be prohibited to use and transfer them without the permission of the tax administration.
- 8.4. It is prohibited to use by other person, depending on the nature of the seized asset, if its use has the risk of affecting the asset valuation, damage it.
- 8.5. In case of necessity of transportation to ensure the integrity of the seized capital, it shall be reported to the tax administration.
- 8.6. The person responsible for asset integrity (hereinafter referred to as the "Depositor") is not a taxpayer or member of his family, and unless otherwise provided in other agreements, the liability for asset integrity shall be regulated by the Storage Agreement provided for in Article 422 of the Civil Code.
- 8.7. The Depositor shall be fully liable for any damage to the asset that was stored without the consent of the tax administration, if it was transferred to a third party, replaced, lost, damaged, destroyed, hidden, or changed the asset's condition.
- 8.8. Legal entities that is undertaking the trading, registration of the securities, payment settlements, and storing and other transaction participants shall not sell seized securities

without the tax administration's permission. Transactions related to the exercise of restricted rights shall be immediately stopped upon receipt of the decision to seize.

Nine. Cancellation of Seizure

- 9.1. The tax administration shall completely or partially cancel the seizure in the following cases:
 - 9.1.1.Tax debts related to seizing have been completely settled due to tax payment, allocation, correction of the tax return, or other reasons;
 - 9.1.2. the value of the seized assets no longer reaches the sum of the costs of collecting the tax debt and claims that take precedence over seized tax;
 - 9.1.3.the tax debts related to seizing have been partially settled, allocated, taxed amount has decreased due to correction of tax return, the value of the seized asset has increased, and for other reasons, the value may double the sum of the tax and other receivables related to the seizure;
 - 9.1.4. The taxpayer in debt was exchanged for another suitable for seizing asset, and it was seized.
- 9.2. Taxpayer in debt shall be notified on cancellation the seizure.
- 9.3. To cancel the seizure of immovable property and other assets, it shall notify the relevant registration authority.
- 9.4. The tax administration shall notify the person specified in article 2.11 of this regulation of the seizing.

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Appendix to the Order of the Minister of Finance #306 on 2019

THE REGULATION ON AUCTION AND MONETIZING BY DIRECT CONTRACT

One. General provisions

- 1.1. The purpose of this regulation is to regulate relations arising from the seized assets and pledges specified in 68.2 of the General Taxation Law, in connection with auction and monetizing by the direct contract, based on the relevant provisions of the Civil Code and the Law on the enforcement of Court decisions.
- 1.2. The auction shall be undertaken in accordance with Article 71 of the Law on the enforcement of Court decision execution.
- 1.3. Information related to conducting auction shall be recorded in the Tax registration database, according to provision 33.1.12 of the General Tax.
- 1.4. The tax administration shall have a treasury account for the placement the costs of conducting the auction and the auction deposit.
- 1.5. The head of the state administrative body in charge of taxation may approve the form of the acts and forms required for the procedure.

Two. Public auction type for the monetizing of assets

2.1. The public auction will be organized in the following types, depending on the type of assets:

2.1.1. Tender;

2.1.2. Auction;

- 2.2. Immovable property, securities, intangible assets, valuables related to historical and cultural heritage, and licenses of the debtor shall be forcibly sold through auctions, as required by law.
- 2.3. Debt taxpayer's assets, other than those specified in clause 2.2 of this regulation, shall be sold at the auction in accordance with clause 2.1.2 of this regulation.
- 2.4. The auction shall be held in accordance with Article 64.3 of the Law on the enforcement of Court Decision and Article 197 of the Civil Code.
- 2.5. In the case specified in 68.5 of the General Law, the asset shall be monetized by direct contract.

Three. The authority, responsible for organizing the auction

- 3.1. If the taxpayers' debt related to the state administrative body in charge of taxation shall be settled by the large taxpayer unit, the aimag, capital city tax department and subdivision shall set up a working group to settle the debt of the other taxpayer, while organizing the auction.
- 3.2. In accordance with Article 63.7 of the Law on the Enforcement of Court decision, the securities auction shall be carried out by the organization in charge of payment, settlement and registration of the securities.
- 3.3. The head of the respective tax authority referred to in Article 3.1 of this Regulation shall appoint the auction working group and the auctioneer.

Four. Setting the Auction price

- 4.1. The working group shall adhere to the provisions of Article 55 of the Law on enforcement of Court Decision in accordance with 68.3 of the General Taxation Law when setting the auction price of assets.
- 4.2. The price of the first and second auction shall be set in accordance with Article 177 of the Civil Code and 75.3 of the Law on the Enforcement of the Court decisions.
- 4.3. Auction on Debt securities (bonds) issued by the Government and other authorized bodies shall be undertaken in accordance with Article 65.3 of the Law on the Enforcement Court Decisions.
- 4.4. Unless otherwise provided by law, the auction price may be set based on asset valuation report made by an appraiser, according to the Asset valuation law.

Five. Decision to set an Action

- 5.1. The decision to set the auction shall be made 15 days before the auction and shall include the following information:
 - 5.1.1. name, size, use, location, initial price, owner of the asset;
 - 5.1.2. date, time and location of the auction;
 - 5.1.3.state registration number of the immovable property;
- 5.2. The tax administration shall provide the following documents to the working group specified in article 3.1 of this regulation:
 - 5.2.1. the act of seizing the assets, the seizing sheet, the letter of notification of seizure;
 - 5.2.1. asset pledge agreement, guarantee agreement;
 - 5.2.3. evidence of asset rights, copy of the relevant state registration documents;
 - 5.2.4. a copy of the certificate of use and possession of the asset;

- 5.2.5. state registration document for the right of use, possession and ownership of the land where the real estate is located;
- 5.3. In the case of monetizing of unfinished buildings and infrastructure by public auction, in addition to the documents specified in Article 69.2 of the Law on the Enforcement of Court Decision, a copy of the license, confirming the construction of the given building and infrastructure, shall be provided to the person conducting the auction.
- 5.4. The Working Group will accept the documents referred to in Articles 5.2 and 5.3 of this Regulation and decide to organize an auction. The decision will be submitted to the registration authority and the taxpayer with debt.

Six. Auction delay and pause

- 6.1. A forced auction may be delayed for up to 3 months if the taxpayer proposes to sell his own assets independently, in accordance with Article 63.1 of the Law on enforcing Court Decision.
- 6.2. Auction may be delayed for up to 2 months if an asset valuation other than those specified in Article 64.5 of the Law on Enforcement of the Court Decision is established and the taxpayer proposes to sell the asset independently.
- 6.3. Auction shall be paused on the following reason and period:
 - 6.3.1. if there is a complaint in the court regarding the initial valuation of the assets, until the final court decision is made;
 - 6.3.2. if the taxpayer confirmed as dead, disappeared, and or determined not having legal ability, legal entity is reorganized, their rights and obligations shall be transferred to the heirs, until the appointment of the property guardian of the disappeared taxpayer, or the guardian of the citizen not having legal ability;
 - 6.3.3. Until determining and founding the taxpayer citizen or a legal entity founder and representative;

Seven. Auction deadline

- 7.1. The auction shall be carried out within 30 days of the decision of the Working Group.
- 7.2. Assets other than those specified in 64.5 of the Law on Enforcement of the Court decision, shall be monetized within 2 months after the assessment.
- 7.3. The tax authority shall conduct a forced auction within 3 months if received a proposal from taxpayer to sell its assets independently, in accordance with Article 63.1 of the Law on Enforcement of the Court decision.

Eight. Auction publicity, participants, and auction deposit

- 8.1. The auctioneer shall publicize auction related information through social media and in other forms within the period specified in 70.1 of the Law on Enforcement of the Court Decision and 197.13 of the Civil Code, depending on the type of auction,
- 8.2. The auction participants, who paid auction deposit and his authorized agent will participate in the auction.
- 8.3. Only a Mongolian citizen can participate in the auction, specified in 70.3 of the Law on Enforcement of the Court decision.
- 8.4. The following persons shall not participate in the auction directly or indirectly:
 - 8.4.1. the taxpayer who owns or possess the assets;
 - 8.4.2. state tax inspectors, employees and officers of the tax authority;
- 8.5. The first and second auction participant shall place a deposit equal to 10% of the fixed value of the asset in the state treasury account, 24 hours before the start of the auction.

Nine. Organizing auction

- 9.1. The auctioneer shall present the decision on the auction, the amount of payment, introduction of the assets, and the date of its seizure and pledge.
- 9.2. The auction will start as soon as the first quotation is made.
- 9.3. The auctioneer shall set the minimum price for the raising of the asset and make notes.
- 9.4. The auctioneer announces the last bid, and after three calls, announces the winner ending the auction.
- 9.5. Cancelling, delaying and organizing second auction shall be undertake in accordance with Article 176, 177 of the Civil Code.
- 9.6. Transfer of ownership of immovable property sold at auction shall not exceed the period specified in Article 71.10 of the Law on Enforcement of the Court Decision.
- 9.7. The Auction Working Group shall make a decision within three business days of the auction, specifying the full name of the winner, the price of the assets purchased at the auction, and the period of time for which the ownership right will be acquired and the taxpayer debt release date.

Ten. Conclude a contract with an auction winner and transfer asset rights

- 10.1. The Working Group shall make a note during the auction, and the auction shall be considered valid, signed by the participants and the Chair of the Working Group.
- 10.2. The winner of the auction loses the auction deposit, if avoids signing the notes and contracts.

- 10.3. Head of the competent tax administration shall conclude an asset right transfer contract with the auction winner, based on the decision of the Working group.
- 10.4. The auction deposit shall be considered as the fulfillment of the contract obligation, when concluding an asset right transferring contract.
- 10.5. Upon payment of the asset, the auction winner will submit a request to the tax authorities to cancel the seizure, based on that request, the tax authority will make a decision to terminate the seizure, and send the decision to the registration authority, which will remove it from the relevant registry.
- 10.6. The tax authority shall send relevant materials on the transfer of asset rights in the name of the auction winner in writing to the relevant authorities.

Eleven. Organizing second Auction

- 11.1. A second auction shall be held in the following cases:
 - 11.1.1. there was only one participants;
 - 11.1.2. there was no quotation from participants;
 - 11.1.3. in case the auction winner not paid the price of the assets purchased at the auction in the period specified in this regulation, has refused by offering to the next bidder, who suggested more than the original bid price;
- 11.2. The decision to conduct the second auction shall be made by the head of the competent tax administration, and shall be publicized and organized within the period specified in Article 177.3 of Article 177 of the Civil Code.
- 11.3. The price of the assets at the second auction shall be set by mutual agreement or 50% of the market value set by the appraiser.
- 11.4. The price of movable property not sold at the auction shall be set in accordance with Article 64.4 of the Law on Enforcement of the Court Decision Making.
- 11.5. Asset not sold by auction under this regulation, shall monetized by direct contracts.

Twelve. Allocation of the proceeds from auction

12.1. Revenue monetized by the way of direct contract and forced auctions shall be allocated in accordance with article 56.3 of the General Tax Law and in accordance with article 69 of the law.

Thirteen. Monetization through direct contract

13.1. Monetization through direct contract shall be performed in compliance with this Regulation by the task force established by the order of the head of the tax administration in the cases specified in 68.5 of the General Tax Law.

- 13.2. Raw materials for long-term storage may be decrease its quality may be traded directly with the manufacturer, who produces the products using the raw material.
- 13.3. Information on assets under direct contract sale shall be publicized through social media and website 7 working days prior and shall be noted to the taxpayer with debt. Information on the sale of perishable and damageable assets, except food products, shall be announced immediately to the public and the taxpayer with debt shall be notified.
- 13.4. The working group shall set the price of the assets to be sold under direct contracts as specified in 4.1 of this regulation and be approved by the head of the tax administration.
- 13.5. In the case of two or more persons requesting a purchase by a direct contract, the applicant shall fill out the "Price Quotation Sheet" in accordance with the requirements of confidentiality and the contract shall be commenced with the highest bidder.
- 13.6. Assets registered on the stock exchange may be traded by direct contract if it is possible to sell at the market price at that date.
- 13.7. The head of the tax administration shall commence a "Sales contract" with the buyer by direct contract.
- 13.8. In case the asset not sold through direct contract, it shall be returned to the taxpayer.
- 13.9. The buyer by direct contract will pay the contract price within the time frame specified in the contract, and if not paid, the tax administration shall cancel the decision to sell.

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REGULATION ON GRACE PERIOD FOR PAYING TAXES

One. General Provisions

- 1.1. This regulation shall be applied to regulate relations related to granting grace period (hereinafter referred to as "granting grace period") of the tax debt specified in article 53 of the General Tax Law.
- 1.2. Granting grace period shall be implemented by the following principles:
 - 1.2.1.the amount of taxpayer's tax debt less than 10.0 million tugrugs, or grace period of up to 3 months shall not claimed collateral;
 - 1.2.2.Except as provided in 1.2.1 of this Regulation, the amount of collateral shall be required which is not less than the amount of the due loss;
 - 1.2.3.Implement the provisions of Articles 53.3.2, 53.3.3 and 53.3.4 of the General Tax Law;
- 1.3. When determining the duration of the grace period, it shall evaluate the taxpayer's assets and set the minimum period to settle the taxpayer's debt specified in sections 53.1 and 53.2 of the General Tax Law.

Two. Condition to grant grace period

- 2.1. If a considerable circumstances specified in Articles 53.1.1, 53.1.2, 53.1.3, and 53.1.4 of the General Tax Law has been established and it becomes clear that it is impossible to pay the tax debt, the taxpayer shall submit a written request to the tax administration. The written reques shall be accompanied by a collateral or pledge agreement which is equal to the amount of the tax debt.
- 2.2. "The taxpayer terminated business activities" referred to in Article 53.1.3 of the General Tax Law shall be understood as provided in Articles 19, 20 and 21 of the Company Law.
- 2.3. Provision 53.1.4 of Article 53 of the General Tax Law means a situation where a taxpayer has incurred large losses for three consecutive years and its financial ability has decreased and the tax debt cannot be fully repaid within the timeframe specified in law.

Three. Request for Granting grace period

- 3.1. The taxpayer shall submit a request for granting grace period specified in clause 2.1 of this regulation to the competent tax administration under the "Request for Granting grace period (Form TT-01)".
- 3.2. The following documents shall be attached to the taxpayer's request to confirm the circumstances of the taxpayer:

- 3.2.1.an act stating the damage caused by the disaster, specified in Disaster Protection Law;
- 3.2.2.certifying documents of medical examination and receipts of medical expenses of the individula taxpayer receiving the treatment;
- 3.2.3.decision on suspension of taxpayer operations, a statement from the registration authority and other relevant documents;
- 3.2.4.financial report and tax return for the consecutive three years preceding that fiscal year;
- 3.2.5.list of assets, calculations and statement showing solvency of the taxpayer;
- 3.2.6.notarized consent of other owners if the immovable property is jointly owned;
- 3.2.7.schedule of payment of tax debts for the grace period;
- 3.3. If the taxpayer requires collateral in accordance with Article 53.3.1 of the General Tax Law and uses other persons' pledge in accordance with 53.3.3 of the Law, request for granting grace period and attach one of the following documents confirming it:
 - 3.3.1.pledge agreement, description, quality, price, location related documents, asset insurance agreement regarding the collateral;
 - 3.3.2.guarantee agreement of the guarantor;
 - 3.3.3.in case of pledging asset of a third party, the pledge agreement with the consent of the third party;
 - 3.3.4. a document stating the consent of the person authorized to represent the legal entity in case of pledging of the company's equity;
 - 3.3.5.asset valuation report;
- 3.4. If the taxpayer's written request and the documents attached are reviewed and substantiated, the grace period for paying the tax debt may be provided by the decision of the head of the respective tax administration.

Four. Accept, approve and implement the grace period request

- 4.1. The taxpayer request for granting grace period shall be inspected within 10 working days by the tax inspector appointed by the head of respective tax administration who shall review the package of documents referred to in Articles 3.2 and 3.3 of this regulation and shall make decision on approval or denial.
- 4.2. If it is difficult to make the appropriate decision due to the incompleteness of the submitted request and its attached documents, the taxpayer's request shall be re-submitted.
- 4.3. The state tax inspectors shall review the following documents:
 - 4.3.1.to determine if there are grounds for granting the grace period;
 - 4.3.2.to verify the accuracy of the loss or damage incurred in relation to disaster and the loss of the financial statements;

- 4.3.3.to determine the taxpayer's asset, amount of debt and conditions related to payment of tax debt;
- 4.3.4.to review taxpayer's assets, investments, receivables, payables, financial sources of business activities, income, expenses, and other items specified by international accounting standards and electronic payment documents;
- 4.3.5.The tax administration shall conduct survey on current financial ability for for determining the current and future financial ability of the taxpayer who requested for grace period, or financial condition after the race period, the amount of tax debt related to the grace period, installment amount of tax debt during the grace period and determine whether the granting grace period will continue.
- 4.4. Based on the decision referred to in Article 4.1 of this Regulation, the head of the tax administration shall make a decision that approves the grace period and the schedule of payment of the tax debt, and deliver it to the taxpayer, pledge owner, guarantor and other related persons.
- 4.5. The tax debt payable period shall be limited to the year specified in Article 53.2 of the General Tax Law and shall be determined for the shortest period, which is considered to be possible to fully pay the tax debt related to the grace period, taking into account the taxpayer's financial ability and other circumstances.
- 4.6. The taxpayer may change the amount of tax debt related to the grace period, or recalculate to the tax debt that was previously discounted.
- 4.7. The taxpayer shall implement the matters related to pledge of the asset and guarantee, specified in Articles 53.3.1 and 53.3.3 of the General Tax Law, in compliance with the Civil Code and the Law on Collateral for Real Estate.
- 4.8. Collaterals for the grace period shall be pledged from the asset which is easy to monetize and with low price fluctuations. The pledged item shall be of sufficient value to fully settle the tax debt and the costs incurred in selling the lien.
- 4.9. Taxpayer's request on the use of collateral or guarantee shall not be accepted in the following cases:
 - 4.9.1.the value of the collateral shall not be sufficient to settle the tax debt and cover the costs related to the collateral;
 - 4.9.2. by taking the property as collateral is impede the taxpayer normal business operation and his or her priority needs for daily life;
 - 4.9.3.the pledged assets and the guarantor's capital are not insured by official insurance during the period;
- 4.10. The Collateral shall be released in the case of any of the following conditions:
 - 4.10.1.all tax debts related to the grace period have been settled;
 - 4.10.2.changed the collateral and pledged other collateral;
 - 4.10.3.the tax debt related to the grace period allocated by overpayment of other types of taxes;

- 4.11.Collateral shall be seized, if necessary, in accordance with the process of collecting tax debts. If the assets belong to a third party, the delinquency settlement procedure shall be carried out the same as taxpayer in debt.
- 4.12. If the taxpayer's request made in accordance with article 3.1 of this regulation does not meet the requirements of the General Tax Law, other relevant laws and regulations, the competent tax aadministration shall not grant a grace period for debt settlement.

Five. Termination of grace period

- 5.1. If there is a situation that the tax debt is not paid out during the grace period, the granting grace period may be terminated by the decision of the head of the competent tax administration and the tax payment schedule may be changed:
 - 5.1.1.The financial ability of the taxpayer and the guarantor has worsened and the circumstances occurred that the tax debt has been prepaid before the grace period has expired;
 - 5.1.2. Taxpayer did not pay tax debt on a schedule;
 - 5.1.3.In case of the value of the taxpayer's pledged and assets used on the guarantor has decreased and become insufficient to pay the tax debt, the taxpayer refused to comply with the tax authority's notice to add or change the pledge to the taxpayer;
 - 5.1.4.new debts have been created in addition to the tax debts related to the granting grace period;
 - 5.1.5.it has been established that the granting grace period request and extension request, or the attachmented documents do not accurately reflect the following information:

5.1.5.1.to request when there is no reason to apply for the granting grace period; 5.1.5.2.intentionnally not writing the assets, or write missed items as existing;

- 5.1.6.reduce or increase real income and expenses;
- 5.1.7.tax deb related to the grace period is fully settled by taxpayer;
- 5.1.8.In case of any of the circumstances specified in Articles 54.1.1, 54.1.2, 54.1.3,54.1.4 of the General Tax Law, the grace period shall be canceled and the tax debt shall be collected from the pledged item.
- 5.2. If the circumstances specified in Articles 5.1.1, 5.1.2, 5.1.3, 5.1.4, 5.1.5 of this Regulation have arisen and if taxpayer does not explain within 10 working days after they have been notified within 3 business days, the grace period shall be terminated by the decision of the head of the competent tax administration.
- 5.3. Decision of the head of the tax administration on the termination of the grace period shall be notified to the taxpayer, guarantor, the second party responsible for paying the tax within 10 working days.

5.4. If the explanation provided by the taxpayer is accepted by the tax administration, it shall be agreed with the taxpayer on the change in the grace period and a decision by the competent tax administration shall be notified to the taxpayer within 3 business days.

Six. Extending the grace period and changing the schedule for paying tax debts

- 6.1. The competent tax administration may extent the grace period based on the request of the taxpayer, in accordance with Article 53.2 of the General Tax Law. The taxpayer shall submit a "Request for Extension of the grace period (Form TT-02)" to the tax authority.
- 6.2. The request for extension of the grace period shall be accompanied by documents proving the circumstances to be acceptable and the proposal to amend the tax debt settlement schedule.
- 6.3. The tax administration shall decide to extend the grace period and change the tax debt settlement schedule, in response to a request from the taxpayer in accordance with the article 6.1 of this regulation.
- 6.4. The tax administration shall determine tax debt payment period and the amount, depending on the taxpayer's asset situation and financial ability, when changing the tax debt settlement schedule.
- 6.5. The tax administration shall notify to a taxpayer regarding the decision to refuse to accept the extension request specified in 6.1 of this regulation.

REGULATION ON THE PROCEDURE FOR COLLECTION OF DELINQUENT TAX FROM SECONDARY PERSON WITH OBLIGATION PAYING TAXES

Article 1. General Provisions

1.1 This regulation applies to collection of delinquent tax from secondary person with obligation paying taxes referred to in the Article 57 of the GTL (hereinafter referred to as the "secondary person"), if the asset of the delinquent taxpayer is insufficient to recover its delinquent tax.

Article 2.Determination of secondary persons with obligation paying taxes

- 2.1 The state tax inspectors shall determine the status of the delinquent taxpayer's assets in accordance with Article 59 of the General Taxation Law when performing tax collection activities.
- 2.2 If the state tax inspector, in carrying out the activities specified in 2.1 of this regulation, determines that the asset of the delinquent taxpayer is not sufficient to recover its delinquent tax, the state tax inspector must check and determine whether delinquent taxpayer has transferred its asset to others at no charge or at too low price, or created a beneficial status to others by cancelling their receivables after the day preceding one year prior to the date on which delinquent tax referred to in the Article 57.1 of the GTL has been arosed.
- 2.3 If the circumstances specified in the Section 2.2 of this Regulation are established, the person will be the secondary person with obligation paying taxes.
- 2.4. The following principles shall be used in determining the secondary person:
- 2.4.1 whether there is a free transfer or not, such as a gift, transfer of receivables, investments and payment of assets;
- 2.4.2 whether the receivables were cancelled in accordance with Article 239 of the Civil Code;
- 2.4.3. A price below the market price for certain assets of which the market price is known, such as securities, is considered too low;
- 2.4.4. With regard to other assets, a price below the price determined in accordance with benchmark pricing method referred to in the Article 6.1.11 of the GTL, is considered too low;
- 2.5 If the secondary person with an obligation paying taxes related to other tax administrations is obliged to pay taxes on behalf of the current taxpayer, the obligation can be laid upon twice.

Article 3. Determining the amount of tax payable by the secondary persons

- 3.1 The amount of tax payable by a secondary person is determined by the amount of tax from the total amount of taxes of the delinquent taxpayer, for which the secondary person will be required to pay:
- 3.1.1.if the taxpayer has transferred its assets for free, the value of the transferred assets and rights;
- 3.1.2.if the value of the assets referred to in the Section 3.2 of this Regulation has not been changed, thebenefits from the assets shall not be added to the value stated in the Section 3.1.1 of this Regulation;
- 3.1.3.if the value of the transferred asset increases, the cost for increasing such price shall be deducted;
- 3.1.4. if the transferred assets are related to the rights to use land, use other's lands for special purposes, leasing or granting a mortgage right, in order to own the transferred assets, the value of the assets is determined by deducting the cost of creating these rights from the sum of the value of the assets and proceeds received in accordance with the above rights.
- 3.2 If there is a changes in the value of the assets as a result of the full or partial sale, gift, damage or disaster, the value of the assets is determined deducting cost incured to generate income from forced sale, gift, payment, the insurance compensation and the loss compensation from the sum of value of remaining assets and proceeds from forced sale, gift, payment, the insurance compensation.
- 3.3. by the difference between the amount transferred and the price specified in Article 6.1.11 of the General Taxation Law, if the delinquent taxpayer has transferred its assets to others at too low price,
- 3.4 by the amount of receivables and payables annulled if any.
- 3.5 Amount of tax related to the obligation of the secondary person is determined and registered in the Taxpayer to the integrated tax registration information.
- 3.6. The amount of taxes related to obligation of the secondary separated from the total amount of delinquent tax of the taxpayer and registered in the section "Decided to collect from others".

Article 4. Submission of notification to second person

- 4.1. If the delinquent taxpayer does not pay delinquent tax within the period specified in Article 51.1.7 of the General Taxation Law, the relevant tax administration shall confirm the amount of taxes payable by the secondary person by an order of the head of the tax administration and submit notification.
- 4.2 The tax administration shall notify the second party in person, by mail and electronically. Refusal to accept the notification shall not be grounds for exemption from the obligation of the secondary person to pay taxes.

- 4.3 In case, if delinquent taxpayer has grace period of paying taxes, notification will not be sent to to the secondary person in connection with delinquent tax. Provision of grace period for secondary person will not apply to delinquent taxpayer.
- 4.4 The activities referred to in section 4.1 of this Regulation shall be performed by the tax administration unit responsible for collection of taxes and delinquent taxes.
- 4.5. Notification and pre-invoices shall be deemed delivered in accordance with the Article 79.3 of the General Taxation Law.

Article 5. Activities to collect delinquent tax from secondary person

- 5.1 Article 51, 54, 60, 61, 62, 63, 64, 65, 66, 68, 69 of the General Taxation Law shall be applicable in the process of collecting delinquent tax from the secondary person.
- 5.2 The secondary person shall pay the delinquent tax in its own name to the account specified in the notification of the tax administration. Amount of delinquent tax of the taxpayer will be reduced by the amount of tax paid by the secondary person.
- 5.3. The secondary person can pay the tax stated in the notification by deducting from own overpaid taxes.
- 5.4. If the amount od delinquent taxes has been reduced partially as a result of paying the delinquent tax, withheld, or making adjustments to reduce the tax payable, the tax payable by the secondary person shall decrease in the amount of the reduced delinquent tax.
- 5.5 If it is not enough to pay delinquent tax from overpayment of a secondary person, there shall be no basis for exempting from paying the remaining delinquent tax.
- 5.6. If the delinquent tax of taxpayer is overpaid by the secondary person, then this amount shall be deducted from the amount of delinquent tax if the secondary person has delinquent tax.
- 5.7.The tax administration shall notify taxpayers and secondary persons who have delinquent on implementation of the Sections 5.2, 5.3 and 5.4 of this Regulation.
- 5.8 An invoice shall be sent to the secondary person within 30 working days from the date of delinquebt tax creation, with the exception of cases provided for in Article 58.3 of the General Taxation Law.
- 5.9.If there is a precondition for collecting risky tax from a secondary person, the tax administration shall send pre-invoice in the period specified in Article 54.2 of the General Taxation Law.
- 5.10. If there is a precondition for collecting risky tax from the taxpayer collecting risky tax shall not ne carried out from the secondary person.
- 5.11 If the amount of delinquent tax has been changed after the tax administration has submitted the invoices to the secondary person, the following measures shall be taken:

- 5.11.1.Reduction of delinquent tax and correction of delinquent tax amount;
- 5.11.2 If delinquent tax incurred as a result of the correction arises after the obligation of secondary person, the notification must be re-sent to the taxpayer by adding the amount of the delinquent tax.
- 5.12.If necessary, the relevant tax administration shall adhere to the following principles when performing activities specified in Articles 60, 61, 62, 63, 64, 65, 66 of the General Taxation Law:
- 5.12.1 when collecting delinquent tax from secondary person, assets cannot be seized, with the exception of assets that are associated with the obligation of the secondary person;
- 5.12.2 If an asset consists of asset subject to the obligation of secondary person and other assets, then this asset can be seized as one asset;
- 5.13.If the secondary person requests grace period referred to in Article 53 of the General Taxation Law, the relevant tax administration may provide grace period of paying the tax in accordance with the Regulation for providing grace period of paying taxes.
- 5.14. If the asset of the secondary person was seized before the grace period was granted to the delinquent taxpayer, and large expenses were incurred that prevented the price from dropping during the grace period, so that the delinquent tax cannot be recovered from such assets, then the seizure should be canceled.
- 5.15 When implementing the provisions of Articles 68 and 69 of the General Taxation Law, the monitezation has been carried out classification of assets as assets subject to obligation of secondary person and other assets, proceeds form other assets is transferred to the secondary person.

Article 6.Expiration of the obligations of the secondary person

- 6.1 If the delinquent tax associated with the secondary person has been fully paid, the secondary person shall be notified and the obligation of the secondary person shall expire.
- 6.2. If the secondary person has fully paid the delinquent tax in accordance with section 5.2 of this Regulation, the obligation of the secondary person shall expire and the delinquent taxpayer shall be notified.
- 6.3.If the court has decided to consider the conditions and criteria for the secondary obligation are not valid on the basis of claim of secondary person to the court, the obligation of the secondary person shall be terminated and the amount of delinquent tax of the taxpayer separated shall be restored.

MANUAL ON DELINQUENT TAX COLLECTION

(Version of JICA experts)

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MANUAL ON DELINQUENT TAX COLLECTION

CHAPTER ONE. DELINQUENT TAX SETTLEMENT

1. "Delinquent tax settlement" has a broad range of meaning, including delinquent tax collection in a context of all activity in tax collection.

In case if taxpayer failed to pay taxes due time (1) tax administration shall send a tax pre-claim for payment of delinquent tax, (2) in the case a taxpayer failed to pay the delinquent tax within 10 days tax administration will seize a bank account and send a request to seize a property or to withhold a tax payment, (3) or if a taxpayer is unable to pay tax due to disaster and illness etc. he/she may enjoy grace period for paying taxes at the request, (4) also in case if taxpayer has transferred his/her property a secondary person at no charge or for too low price, delinquent tax shall be collected from that secondary person with the obligations of tax payment.

Therefore, delinquent tax settlement means an implementation of all activities connected with delinquent tax collection and those activities can be divided into following activities: 1) internal activities based on facts and information such as meeting with taxpayers for inquiry, discussion on tax payment and collecting related information, 2) enforcement measures such as seizing, monetizing the seized assets and allocation of the proceeds from monetization.

Tax debt settlement could be successful through the bilateral cooperation.

(An additional note)In general, delinquent tax collection means tax administration's execution of enforcement measures to collect tax due based on the self-enforcement right and those measures are described in the GTL.

2. Basic principles to settle the delinquent tax

The following basic principles will be followed to settle the delinquent tax.

(1) The main function of tax collection inspector (an inspector who has right to conduct enforcement measures to collect tax due among tax collection inspectors) is to make negotiation on tax collection and secure tax revenue based on delinquent tax collection measures.

In the course of conducting this function, it is important to deal with taxpayers always fairly and honestly as a basic principle.

(2) When implementing delinquent tax settlement measures it is required to use tax laws other than GTL, the Civil Code and the Bankruptcy Law and it is important to have a skill to read and understand other statements and reports and accounting documents in order to determine an asset status and analyze a tax payment capacity of the taxpayer. In order to do this, it is important to learn about the importance of these laws and to improve the knowledge of accounting and work hard towards higher levels of tax collection.

(3) Tax inspectors have several rights in relation to tax collection and are responsible for confidentiality of taxpayer information that is known within the scope of they assignment. In case of failure to fulfill this obligation and transfer of taxpayer's confidential information to persons other than referred to in the GTL an administrative penalty is imposed.

Protecting and maintaining an information in secrecy by tax inspectors will facilitate bilateral cooperation with taxpayers and its important to know that it will make easier to carry out their duties.

CHAPTER TWO POINTS TO PAY ATTENTION IN TAXPAYER RELATION

1. Basic principles to be guided by in taxpayer relation

Tax debt settlement activity starts from taxpayer relation with delinquent taxpayer. It is impossible to settle delinquent tax without taxpayer relations.

Also, when dealing with a debt taxpayer, a tax inspector need to have a strong desire to "fully settle a delinquent tax".

The taxpayer relation means meeting with the delinquent taxpayer at his/her home, workplace, as well as meeting with taxpayer when he/she visits tax office, making a phone call and contacting with related third person with the delinquent taxpayer.

In any case of above-mentioned cases, tax inspector has to communicate with variety of people with different age and work experience. The good and bad relationship of tax inspectors is closely related to the trust in the tax administration's activity and may also affect the taxpayer's consciousness to pay taxes.

Therefore, it is important to prepare well before meeting with a taxpayer, to use correct words and to have a right attitude, to communicate in good manner and to make a communication well-arranged having answers to questions "when, who, where, why and what happened."

(An additional note)

- 1. The plan and process of settling the delinquent tax with delinquent taxpayer are not the decision of one inspector, it will represent an implementation of the tax administration's policy. Therefore, if it is required it is important to clearly state that the corporate policy is not an individual's point of view.
- 2. In resolving difficult delinquent tax cases, frequent meeting with the taxpayers will lead likely to reach more_successful agreements with taxpayers.

2. Points to pay attention in taxpayer relation

1) Key points and concerns

(1) Person to communicate

In principle, it should be communicated with the delinquent taxpayer itself (a certain person who is responsible for paying taxes such as a director, a representative or a head of finance department of a business entity etc.) and there should not be negotiation with any other person to pay delinquent tax.

If you are meeting with the taxpayer's family member, you must be aware of your obligations to keep the secrets and be careful when making meetings and communications.

(2) An attitude

When meeting a taxpayer, a tax inspector should pay attention to his or her body language (should not show the kind of hypocrisy and coarse for example, placing a foot on the table or changing body position).

- (3) Other
 - a. The taxpayer often restrain itself before the tax inspector, so it is important to pay more attention to the taxpayer to feel free in communication with the tax inspector. To do so, routine talks with the taxpayer may also be effective.
 - b. A delinquent tax settlement is an implementation of the law; Therefore, it is required to explain it to the taxpayers in a clear and understandable way.
 - c. Do not answer questions or requests from the delinquent taxpayer unclear answers, or joke and it should be answered in exact way.

2) Making a phone call

Making a phone call is not a face to face communication and it is easy to create misunderstanding and unfriendly relationships. Therefore, it is very important to have proper communication same as face to face meeting.

If the phone call comes from the tax administration's side name of the tax office and tax inspector should be told and the name of the person who is going to be contacted should be properly checked. If the call comes from the other side, it is required to tell a name of the tax office and ask a name of the person who is calling. It would be first step in making a phone call.

3. Points to consider during the meeting

(1) If the taxpayer said that taxes already been paid

If the taxpayer has already paid the taxes already the the collection data system and payment receipt will be checked.

(2) If the taxpayer said that he/she was willing to pay all taxes

If the taxpayer is willing to pay all delinquent tax, it is required to estimate and carefully review a tax due as well as due losses and penalties (hereinafter referred to as the "supplement tax")in order to not making a re-estimation.

(3) If the taxpayer express that it is unable to pay the delinquent tax directly

If it is difficult to pay the delinquent tax directly, on other to know taxpayer's situation ask current situation, the reason for the tax arrears, the willingness to pay (the payment plan), the income and expenditure and the asset status.

If the delinquent tax is relatively small and is possible to be paid in a short period of time, it is important to negotiate paying all taxes, or increace an amount of payable part of the taxes and than it may be possible to permit to pay the portion of the unable to pay taxes partially based on the circumstances. Except above, based on

negotiation with the delinquent taxpayer, it is possible to permit to pay the portion of the difficult to pay taxes partially based on the circumstances having made an estimation of an amount of taxes that possible to be paid currently and payable in the future:

In this case, if the deferred payment due is high, or the length of the payment duration is longer then the seizing of the asset should be taken depending on the circumstances (except a grace period).

Also, when agreeing to make tax payments partially it is important to make a "tax payment agreement" with a taxpayer and a term "not to create new tax arrears" should be included in the agreement.

A. Estimation of amount of taxes that are possible to be paid currently (amount of taxes to could be paid directly)

Payable amount shall be estimated as follow:

[available money + money available to withdraw from an account + security convertible to cash] – [an amount out of previously estimated total amount that is not possible to pay taxes (approximately money required for 1 month operation (including the amount of payment required to operate, salaries, leases, indirect costs, credit payments, leasing payments and other expenses), living expenses, other necessary payments]

B. Calculation of the amount payable in the future (hereafter referred to as an amount of partial payment)

The total amount of payable is calculated by subtracting from monthly income (sales revenue, salary, incentives and other income) the expenses (payment, salary expense, indirect costs, loan payments, lease payments, living expenses and other expenses).

In addition, if there are an income and expenses connected with seasonal activities shall be taken in account. Also, an amount of payable in the future shall be determined by taken into account unexpected earnings (such as sales revenue of un necessary assets, proceedings from loan and lease) or expenses (including costs related to equipment maintenance, repair of housing, and other taxes) if there are any of them.

(4) Case of non-cooperation

In case if there is no willingness of paying taxes, the taxpayer strongly protests paying taxes and does not respond adequately to question relating to reason of not paying taxes or unable to pay taxes you should take a seizing of assets with a strong position.

(5) The case of complaint connected with the tax assessment

If the taxpayer makes a complaint on tax assessment verbally delinquent tax settlement process can be continued in principle, but in case of written complaint, the delinquent tax settlement process shall not be continued until the decision on the tax assessment is resolved. A tax inspector will be consulted on how to take further action in case of a long period of time after receipt of the complaint. In the case of a complaint raising during delinquent tax settlement process without an official complaint connected with the tax assessment it shall be consulted with the tax inspector. If it is determined that the tax assessment was invalid based on enquiry and check of estimation it should be contacted with the tax inspector in charge of tax assessment and delinquent tax settlement process would be suspended.

4. Measures to be taken if a taxpayer is absent

If the taxpayer is not at home or workplace when tax inspector visits following measures shall be taken:

- (1) In the case if the taxpayer with the delinquent tax is absent and if there are persons who might be communicated such as the taxpayer's spouse and company manager than tax inspector will ask them to clarify issues necessary for collection of taxes.
- (2) If there is no responsible person to communicate or there is no any person the neighbors will be asked to make sure that wheather the taxpayer is living there or not and the tax inspector will leave at the door of taxpayer's home or send by mail a notification slip (reason to visit and request to come to the tax office should be written) as an evidence of visiting his/her home in his/her absence. However, the notification slip will not be issued unless it is not able to verify the residency of the taxpayer.

CHAPTER THREE. SEARCH FOR LOCATION

There is a possibility that the taxpayer's location can not be determined by the fact that taxpayer's operation has been failed, the taxpayer has moved out from his/her home without notising where he or she is located.

In this case, it is necessary to investigate the location of the taxpayer based on analysis of documents kept in the tax office and have to search the the taxpayer's location together with the relevant authorities, partners, and police organizations based on the taxpayer's economic and social activity.

1. Internal search

It is required to check the address, name, location, and phone number specified in financial and tax reports has been changed or not.

2. Search involving the relevant persons

It is possible to ask the partner, employer, neighboring family about the taxpayer's behavior, family status and living status immediately before his/her location become unclear and about how to contact after changing his/her location of residence.

3. Search involving the government organizations

The mid-tier and local governing bodies are responsible for establishing good environment for cooperation with the tax administration and provide tax administration with the information required for tax collection.

Main relevant authorities are as follow:

(1) Aimag, city, district and khoroo

a. Registration of individual residents

Individual residents of the aimag, city, district and khoroo are registered as family members and therefore it can be used to search the name, date of birth, address and previous address of those individual residents. Request for change of residence address shall be submitted within 7 days after the decision to transfer to the new address.

b. Registration of the family

It is possible to find out from the delinquent taxpayer's family registration an information such as date of birth or date of death, marriage status, relatives and change of address etc.

(2) State registration office

a. Registration of individuals

It is possible to search address of the residence and a family registration.

b. Registration of a foreigner's family

In a case if a Mongolian citizen is married to a foreigner, a search will be made on the family data, such as marital status and the child etc.

* Immigration Office

It is possible to search a record of entry and exit of a foreigner through the state border as well as citizenship of the delinquent taxpayer, name, date of birth, address (location) residence permition and period of residence using foreigner's family registration.

- c. Registration of the Legal Entity (Trade registration, Registration of the legal entity) An information on company's identification number, location of the head office, address and name of the shareholders, their changes, date of discharge of an employee, date of incorporation and liquidation, liquidation commission etc. could be searched.
- d. Real estate registration, such as land and buildings

At the Real estate registration office can be found an information, such as owner's name and address, an information on address change and its reason, whether the assets have been seized or not, also, the address and name, of the person who has rights such as the mortgage right.

(3) Car registration center

It is possible to check the car number, the owner's address and name.

(4) Police department

Based on tax administration's request, the Police department shall cooperate (Article 34 of the GTL) in determining the address of a citizen of Mongolia, a foreign citizen, or a non-citizen of Mongolia, individuals not registered, as well as location of persons with unknown address.

(5) Court

Search for the existence of the auction will be made by requesting a copy of the document.

CHAPTER FOUR. DETERMING AN ASSET STATUS

During the delinquent tax settlement it is required to determine and properly check following issues such as financial ability of the taxpayer to pay the tax liability (current and future ability to pay), are there any assets to recover the delinquent tax, are the assets worth to monetize, how easy it is to monetize.

(Note) For the estimation of a current and future ability to pay, see Chapter II. Section 3 (4). Depending on where the tax collection is conducted, type of search can be classified as a search involving the government organizations, involving the relevant persons and an on-site inventory audit. Depending on the method the search and investigation can be classified as for an activity performance, an activity progress, an inquiry and an on-site inventory audit.

1. Points to consider during the asset investigation

(1) An immediate action

An immediate action should be taken before the delinquent taxpayer sells an immovable property, reduces money in saving account, disposes other property, loses financial ability.

(2) Preparation

At the preparation stage, it is important to make search objectives clear and prepare for the delinquent tax settlement to implement more efficiently and effectively.

- (3) The on-site inventory audit At this stage living conditions, situation of business activity and financial situations of the taxpayer are checked.
- (4) Search on delinquent taxpayer's business partners
 In order to examine contents of delinquent taxpayer's request tax administration shall collect an information such as references, from other government organizations.
 Also, for the purpose of the search an identification, an ownership and possession of the property, as well as the borrower shall be checked.

2. Information from the government organizations

(1) Collection of information based on the government organization's obligation to provide an information

Financial institutions and other organizations (stock exchange, commercial organizations, police departments, customs offices, registration offices of individuals and foreign nationals, mid-tier and local government organizations, civil servants)are obliged to provide some information with the tax administration, so at this stage try to collect as much information as possible.

(2) The internal search

During the internal search (collection of an information using tax administration's database) the tax return of each tax and attachments to it, as well as documents related to the tax assessment are checked and income sources and an information on his/her business activities (type and form of the business activities, changes in income and profits, management structure etc.), an asset status are determined.

Internal search is conducted based on documents relating to delinquent tax settlement and tax assessment in the past, therefore it is easy to check a status of the taxpayer's assets, situation of the business operation and transactions.

But, on the other hand, taking in to account limited character of the available information, it is required to investigate it in more detail.

(3) Information from the government organizations

State registration office, aimags, sums and districts have an information and records required to manage their activities, as well as to register their rights to the public. When studying these registration documents, it is possible to find out the taxpayer's residence, rights on land, building, renting a land, car ownership and other rights for the property etc.

3. Information from the financial organizations

When investigating the status of assets an information from financial institutions is important.

Based on the tax administration's taxation related documents, references from the financial institutions, documents found during on-site inventory audit tax inspector should check whether there are the bank accounts and receivables owed by the taxpayer regardless of the owners of those accounts and identify financial institutions through which transactions are made.

In addition, knowing the history of collateral for loans and bank transactions, the status of assets and business operations of the taxpayer can be clarified.

4. Other searchs

The location of the taxpayer can be checked based on payment method and the payment account used for a payment to the gas and energy supply company. Based on internal search result such as determination of business partners (partners with receivables and payables), it is possible to check payments, as well as receivables and payables.

If there is a lease of a building, the leasepayment, lease duration and form of the lease payment should be checked. Checking delinquent taxpayer's residence allows the tax administration to find out savings, receivables, securities and precious metals belong to the delinquent taxpayer.

5. Conduct inquiry and inventory audit

(1) A search to be done during the performance of job duties

It is possible to undertake a variety of searches during the collection of the tax imposed unless it is not prohibited or restricted in according to the law. A broad range of surveys such as an inquiry of the neighbors and family members, search for business partners may be conducted within the performance of job duties.

It is important to note that, effectiveness of the search results depends on an attitude of the participants involved in the search and inquiry.

- (2) Inquiry and examination by the tax inspectors
 - a. Inquiry

An inquiry is an action to determine status of the asset by asking an information available to client's, or investigation of the asset status of the delinquent taxpayer directly or indirectly. In order to get answers to the inquiry, it is required to prepare questions in advance and be prepared.

1) Cases to make an inquiry

An inquiry may be conducted in case of "Conducting investigation of the asset status of the delinquent taxpayer for the purpose of the delinquent tax settlement".

In other words, this means that in order to collect delinquent tax, it is necessary to find out whether the delinquent taxpayer has an asset or not, if he/she has an asset, its location, type, quantity, cost or price, working conditions and third party participation in the asset.

2) Who should be interviewed?

The inquiry can be conducted through interviews with the following persons:

- a. A delinquent taxpayer;
- b. A third party who holds delinquent taxpayer 's assets in possession;
- c. A third party with sufficient reason to believe that he/she possess delinquent taxpayer 's assets;
- d. A person with sufficient reason to believe that he or she has a relationship with the delinquent taxpayer with regard to receivables or payables;
- e. A person with sufficient reason to believe that he/she is received an asset from the delinquent taxpayer;
- f. A person who is the shareholder of the delinquent taxpayer, or a legal entity that investing in the delinquent taxpayer;
- 3) Method of inquiry

The inquiry shall be conducted verbally or in writing.

4) Record of the inquiry

In case, if verbal or written answers have an important information, or if there is a reasonable ground that there could be conflict in the future, it is necessary to record them in writing.

This is called "record of the inquiry".

b. An examination

Purpose of the examination is to identify the assets of the delinquent taxpayer, to collect evidence and documents related to the case and transfer of assets, as well as to find additional assets subject to delinquent tax settlement activity. In order to make an effective examination, it is necessary to prepare a questionnaire, registration documents and an examination procedure in advance.

i. Cases to conduct an examination

The examination can be conducted in cases similar to "Cases to make an inquiry" described in the previous section.

ii. What to examine?

It is possible to examine records and documents related to the assets of the person referred to in the previous section or paragraph 2 (2).

In this case, " records and documents related to the assets " means cash income and expense book, payables, lease contract of land and building, savings book, sales and purchase contract, shareholders' records, and documents (including electronic records)necessary to clarify receivables, payables or asset status.

iii. The method of the examination

The examination is conducted on the basis of the records and documents related to the assets of the delinquent taxpayer etc. If during the examination issues that need to be clarified are found, it is very important to clarify by making a request.

c. Responsibilities related to inquiries and examinations

In case of failure to respond to inquiries and examinations, as well as creating obstacles, the person concerned will be charged with responsibility.

(3) Undertaking an inventory audit

Undertaking an inventory audit is a process purpose of which is to detect assets to be sealed among delinquent taxpayer's property or among properties located at home and other places, when it was unable to clarify status of the asset because of the refusal to cooperate, or up on the inquiry.

When undertaking an inventory audit, it is important to plan a time, location, method

and order of undertaking an inventory audit, considering in to account the other side's circumstances.

If during the inventory audit no assets are found that should be seized in documents, during searches involving financial institutions and as well as during inquiries and examinations, on site examination allows the tax inspector to access the taxpayer's residence and places where other assets might be hidden with the purpose of investigating assets.

It is also possible to undertake an inventory audit when delinquent taxpayer's asset is in possess of third party, or a party with special relationship with the delinquent taxpayer.

i. Cases to undertake an inventory audit

If required, an inventory audit is undertaken at the taxpayer's residence and places where other assets might be hidden.

Places where assets may be hiding, are those including safes, rental safes, drawers, and bags etc.

ii. Method of undertaking the inventory audit

During the inventory audit, it is necessary to take the necessary measures to open closed doors, safes and other warehouses by other persons or to open it tax inspectors by themselves.

iii. Time of undertaking the inventory audit

The inventory audit should not be undertaken during a period from sunset to sunrise. However, the inventory audit that started before sunset can be continued after sunset. In addition, if there is sufficient reasons to believe that it is necessary to collect delinquent tax, the inventory audit can be carried out in the hotels, restaurants and as well as other places that can be visited in the evening (eg pubs, nightclubs, cinemas, etc.) during their working hours.

iv. A witness

During the the inventory audit, a third party who reached 18 years of age and has full legal capability, has no conflicts of interests, has no relationship with the taxpayer, tax administration and tax inspector must be present as a witness. Also, when undertaking a inventory audit the taxpayer who owns the asset subject to the inventory audit, the or his/her legal representative or a representative from the relevant local administrative body shall be in presence.

v. Making an act on the inventory audit

The act on such an inventory audit shall be made by the state tax inspector who conducted such an inventory audit and signed by the individuals who were in presence during the inventory audit and the witness. In the case they refuse to sign, give them an opportunity to explain the reason of not signing and attach the explanations to the act. However, if during the inventory audit the property was seized, it is not necessary to make an act on inventory audit, but it is necessary to make an act on seizure and indicate that the inventory audit was carried out.

In the case of making an act on the inventory audit, a copy of the act on the inventory audit shall be handled to the delinquent taxpayer, or third party and the witness, who was in presence during the inventory audit.

CHAPTER FIVE. SEIZING OF ASSETS

In the case of delinquent tax, a tax inspector shall execute delinquent tax collection activity based on the execution of self-enforcement right.

Tax debt collection activity based on the execution of self-enforcement right is a continues activity starting from seizing of assets ending by monetizing sealed assets, purpose of which is to recover delinquent tax in a short time as possible.

When assets are seized, the right of the delinquent taxpayer to administer the assets is limited and it would have significant impact on the daily life and continuation of its activities. Therefore, seizing of assets should be undertaken adequately and carefully. In particular, at the beginning of the seizing of assets, it is important to inform the delinquent taxpayer of the seizing in advance, if this does not impede the collection of taxes.

1. Conditions for seizure

If the taxpayer taxpayer (including heirs, secondary person, who is liable to pay taxes and the guarantor) does not pay all taxes within the period (within 10 business days after submission of the invoice)indicated in the invoices (content of the invoice will be slightly different for secondary person, who is liable to pay taxes and the guarantor), the seizing of the assets may be carried out.

Note:

- * The date of delivery of the invoice is considered the 1st day of the beginning of 10 business days, and the asset can be seized on the 11th day of delivery of the invoice.
- * In case of collection of risky delinquent tax in advance, it is possible to undertake seizing of assets with out delivering the invoice.

Also, in the event of any circumstances arising within 10 days after date of delivery of the invoice which requires collection of delinquent tax in advance, an immediate seizure of assets is possible.

2. Restrictions for seizing

It is prohibited to seize assets during the grace period and when complaints have been filed by the taxpayer, as well as to seize assets excessively and if it is ineffective for seizing.

(1) Prohibition of excessive seizing

No assets shall be seized except for those required for delinquent tax collection. Therefore, the selection of an asset to be seized may be limited by the value of the asset that can recover delinquent tax and decision to seal a particular asset will be made based on proposed sale price of the asset and an amount of delinquent tax to be recovered.

- * The proposed sale price is a price reduced by the amount of the receivables connected with preferential rights, which has to be allocated in first instance, such as the right to mortgage collateral.
- * If there are no assets suitable for seizing and there is only one asset, then this is not considered an excessive seizure, even if the value of the asset exceeds the delinquent tax to be recovered.

(2) **Prohibiting inefficient seizure**

In case, if the proposed sale price of the asset subject to seize does not exceed the total amount of the receivabless that is to be paid before tax payment and tax collection costs, this asset shall not be subject to seizing.

* Due to the fact that the amount of receivables may be changed in connection with the payment of receivables with priority over tax, it must be regularly calculated and verified.

3. Assets and selection of assets subject to seizing

(1) Assets subject to seizing

The following conditions need to be met for seizing:

- A. Assets must be located in the territory where the GTL is applied (in Mongolia) The GTL shall be in force in the territory of Mongolia. Therefore, a taxpayer's asset located in foreign country can not be seized.
- B. The taxpayer should own the asset

If the asset belongs to the delinquent taxpayer, the name or owner of the asset on the register does not matter.

C. The asset must have value in money

The assets must have value in money because these assets will be monetized and delinquent tax will be recovered from monetization proceeds.

- * Receivables that are not payable in money or goods (for example, show performance etc. instead of paying money)can not be seized because the payment is not in money.
- D. It should be able to transfer assets to others

During delinquent tax collection, assets are monetized in two ways, such as selling of seized assets or confiscation of seized assets. Therefore, it should be possible to transfer assets to be seized or seize them.

- * The transfer of specific rights (specific right means, for example inheritance right) belonging to the delinquent taxpayer is not possible. Therefore, specific rights cannot be seized.
- E. The assets should not be assets that are prohibited for seizing Some types of assets are prohibited by law for seizing. The GTL has provisions

prohibiting certain assets and an amount of wages for seizing.

In addition, it is necessary to take into account the provisions of the Law on the Enforcement of Judicial Decisions and other laws that prohibit the seizing of certain assets.

(2) Selection of an asset for seizing

In accordance with the GTL provision, after the invoice has been delivered, "enforcement measures to collect delinquent tax" must be taken, therefore the "bank account" will be seized in first instance, if there are no obstacles and losses for tax collection.

In the case, except for the above cases, the seizing of an asset is a matter of the right of the tax inspector. However, seizing of an asset has a significant impact on the taxpayer and the rights of third parties, so it is recommended to follow the following principles in selection of an asset for seizing.

A. Start selection from assets that are less harmful to third party rights

Sealing is carried out without harm to third party rights, unless there are no obstacles and losses for tax collection. In addition, if clearly defined requirements are met, a third party may request to change the seized asset.

- * In case of seizing of assets belong to the heir and the ancestor has delinquent tax, in order to protect the rights of the heir, seizing begins with the inherited asset, if there are no obstacles and losses for tax collection.
- B. First, select the assets that have the least impact on the life of the taxpayer and his normal activities.

It is important to select the assets that have the least impact on the life of the taxpayer and his normal activities, if there are no obstacles and losses for tax collection.

C. Start selecting assets that are easy to monetize.

4. Determine to whom the asset belongs

(1) Determination in normal situation

The determination of whether the assets belong to the delinquent taxpayer shall be carried out based on following circumstances:

- a. Movable property, securities Whether belong to the delinquent taxpayer or not.
- b. State registered bonds, corporate bonds Whether registered in the delinquent taxpayer 's name or not.
- c. The assets that registered under registration system, such as the immovable properties, aircrafts, road vehicles and etc. Whether registration in the delinquent taxpayer 's name or not.

- d. Immovable properties without registration..... Immovable properties that currently belong to the delinquent taxpayer, but with respect to the registration document, whether they belong to the delinquent taxpayer or not.
- e. Percentage of a shareholding owned by legal entities such as a company Is the delinquent taxpayer a shareholder on the basis of the company's charter or registration document of the company, employee records.
- f. Bank account Is it clear that the account belongs to the delinquent taxpayer.
- g. Receivables Is it clear that the receivables belongs to the delinquent taxpayer based on the records of the receivables and other relevant documents.
- (2) The assets which are in the name of other person

In the following circumstances, the asset is considered to belong to the delinquent taxpayer un accordance with registration document, statement and order etc., even if it is clear that the owner of the movable properties, securities, immovable properties or shares etc is not a delinquent taxpayer or these assets are not registered in the name of the delinquent taxpayer.

- a. If the asset is transferred to the delinquent taxpayer for the purpose of sale, gift, barter and payment with asset
- b. If the delinquent taxpayer transferred the asset with an invalid action, for example, for the purpose of misuse of the asset
- c. If the right of the owner of the asset was transferred to the delinquent taxpayer as an inheritance or merger
- d. If the right, which is registered in the other person's name, belongs to the delinquent taxpayer
 - * If the asset to be seized was registered in the official registration system in the name of another person, this asset can be seized after the transfer of the asset in the name of the delinquent taxpayer.
 - * When determining the assets that belong to a spouse or family member living together, the spouse of the delinquent taxpayer or a family member living together live exclusively on the asset or income of the taxpayer, and this asset is in the jurisdiction of the taxpayer, the asset is considered to belong to the delinquent taxpayer, with the exception of following assets.
 - The assets of the spouse before marriage and the assets acquired in the name of the spouse after the marriage
 - Asset of a spouse owned by a prenuptial agreement
 - Assets used exclusively by spouses or family members living together, other than those specified above

• The spouse's share of the asset when it is unclear whether the asset belongs to the husband or wife.

5. Common procedures for seizing

In the GTL seizing of the asset is classified into 5 groups, such as ① Movable propery and securities, ② Bank accounts, ③ Receivables, ④ Inmmovable property, aircraft, road vehicles and construction equipment, ⑤ Inyangible asset and seizing procedure is determined for each classification.

For all assets, the following common prosedures shall be applicable.

(1) Issuance of act on seizure

In the case of a seizing of an asset, an act on seizure must be issued to register the completion of the sealing procedure and have an evidence, notwithstanding the classification of the seized assets.

(2) The content of the act on seizure

The tax inspector shall include the following items in the act and the act shall be approved by the head of tax office.

- Name and address of the t delinquent taxpayer, or location of the delinquent taxpayer;
- As for taxes related to the seal, the reporting year, the type of tax payment due date and amount of tax payable;
- Name, quantity, characteristic and location of sealed assets;
- Date of issuance
- (3) Delivering copies of the act

If the following assets are seized, a copy of the act on seizure shall be delivered to the delinquent taxpayer.

- Movable assets and securities
- Bank account
- Receivables
- Intangible assets of the third party with payables
- (4) Letter of notification to persons with pledge right

In the event of the seizing of the following assets, persons with a right of pledge known to each tax office will be notified in writing of the seizing and other necessary information. It aims to enable a third party to request a replacement for a seized asset, such as a person with pledge right.

• Assets with collateral and mortgage collateral right, as well assets with other third party's rights persons with these rights

• Assets preliminary recorded in the State register person entitled to make a preliminary registration

6. A legal effect of seizure

(1) A legal effect of seizure in a typical situation

The legal effect of seizure depends on the classification and characteristics of the assets, and in a typical situation the legal effect will be as follows.

a. Restriction of the rights for administering assets

Seizure prohibites dispose of seized assets legally (for example, sale, gift, pledge) or practically (to break, damage, or destroy).

However, such a restriction of rights to administer assets is beneficial to the party (country)with receivables and cannot be claimed by the country after seizing, but it is valid for the participating parties.

* Transfer of the assets to a third party by the delinquent taxpayer is valid for the participating partie.

However, the owner's right to a seized asset cannot be transferred to the state with receivables from the seized assets, it is possible to sell assets to the public, since the right was not transferred to this state at the beginning.

- * Since it is possible to restrict the right to administer assets, which inefficient for a state having a receivables from a seized asset, leasing of seized assets may be interrupted, and maintenance of assets that bring positive value, such as repairs, may be performed.
- b. A legal effect connected with inheritance

If there is no delinquent taxpayer after seizing the assets because of taxpayer's death or company merger after seizing, the collection of delinquent tax is carried out in respect of the heir or merged company.

(2) Expansion of seizure effectuation

1) Auxiliary items

In case of seizing of fixed assets (eg construction), auxiliary items (such as construction auxiliary items)are subject to seizing.

- 2) Fruit
 - Natural fruit

Seizing of assets effects also apply to natural benefits (eg. fruits, young animals)resulting from seuzed assets (eg. fruit trees and animals etc.). Therefore, in these cases no seizing is required for these fruits.

• Civil fruit

Seizing of assets does not effect to the civil friuts (eg lease payments)of seized

assets (eg construction).

Therefore, for example, if the building is seized and it is required to collect lease payment, the leasing of the asset must be seized separately.

However, if the receivables are seized, it is assumed that interest income after the seize will be seized.

(3) The right to claim an insurance compensation

If the seized assets are insured, then the legal effect of the seizure will be eligible for insurance compensation.

However, if the insurance company has not been notified that the assets have been seized, it cannot be claimed insurance compensation from the insurance company in connection with the seizure.

CHAPTER SIX. SEIZURE OF EACH ASSET TYPE

Section One. Seizure of movable property and and security s

1. Definition of movable property

Movable property in the GTL means movable property specified in the Civil Law, from which aircraft, automobiles and construction equipment described in GTL provision are excluded.

- * The following assets are treated as movable assets and subject to seizure
- 1) Cash, foreign currency and cash vouchers
- 2) Unfinished building (building under construction that cannot be registered)
- 3) Unseparated fruits (fruits to be disposed of as movable property)
- 4) Non-registered aircraft, cars and construction equipment

2. Definition of security

Securities include a certificate of the right to an asset, means used to exercise or transfer this right, and financial instruments specified in Section 5.1 of the Securities Act.

- * For securities, for example (1) checks, (2) bills, (3) vouchers for products, etc.
- * Documents similar to credit documents or receipts are not considered securities.

3. Investigations of movable assets and securities

The seizure is carried out on the basis of investigations of movable assets and securities in order to determine the type, value, liquidity and existence of relations with a third party.

* Family movable property is often a luxury item, but value tends to be reduced. On the other hand, the overall rating has little value, but there are examples of expensive items such as paintings, antiques and exquisite items. Therefore, it is necessary to investigate carefully.

4. Procedure for seizing

- (1) Movable property and securities owned by a delinquent taxpayer
 - Upon the seizure of movable property and securities, the tax inspector takes control over the administration of movable property and securities.
 - * "... takes control over the administration..." means the receipt by the tax inspector of the right to dispose of movable property and securities in order to seize the assets.
- (2) Seizure of movable property and securities held by third parties

After the transfer from a third party, property is seized, as indicated in (1), but it

cannot be seized if the third party refuses to transfer it to the tax office.

However, if there is no asset that could easily be monetized all the delinquent tax could be recovered, it is possible to seize the asset by sending an order of the transfer of the asset in written to the tax office within a certain time (5 business days).

Also, if the asset is not transferred within the due time, it may be seized immediately.

(3) Issuing an act on seizure

If movable assets and securities are seized, act on seizure shall be issued and copies are sent to the delinquent taxpayer.

In the event that the seized assets were discovered during an inventory check or inspection, a copy of the act on seizure shall be delivered to related parties, such as a witness.

5. Storage and transportation

(Storage at the delinquent taxpayer, or third party)

In the event of the seizure of a movable asset or security, if necessary, the tax inspector may allow the storage of this movable asset or security with the delinquent taxpayer or a third party to which the movable asset or security belongs.

In this case, the tax inspector must indicate that these assets were seized by taking actions such as stamping, marking or making a public announcement notice.

(Transportation)

Seized asset and security are immediately moved away if they are not stored by a delinquent taxpayer or a third party to which the movable asset or security belongs. In the case of transportion after seizing, the act on seizure can be changed to the "act of transportation", indicating the transportation in the act on seizure. Even if it's stored, it may be necessary to transport it.

In the case of transportation, the tax inspector will issue a "transportation act", sign it and send a copy to the delinquent taxpayer, to the third parties, to which the asset belongs.

* In the case of transportation of movable asset or security, it may be stored by the tax administration or by persons engaged in storage and warehousing, or by other persons.

6. A legal effect of seizure

1) Commencement of a legal effect

A legal effect of seizure will commence when the tax inspector takes control of asset administrations.

However, if the asset is stored by delinquent taxpayers or by the third parties, to which the asset belongs, the legal effect of seizure will commence when the tax inspector takes actions such as stamping, marking, or making a public announcement notice.

2) A legal effect of seizure of monetary asset

In the event of a seizure of a monetary asset, the seized asset deemed to be collected in the amount described in the act on seizure, and the proceeds of this collection will be immediately transferred to the tax account.

- * "Deemed to be collected" means that the obligation to pay delinquent tax related to the seizure has been fulfilled
- 7. Use of and generation of profit and income from seized asset and security

Seized movable assets are very likely to be destroyed and lost, therefore it is not permitted to use them and generate profit and income from them in principle.

Nevertheless, it is permissible to use or generate profit and income in certain cases, if it is clear that the storage of an asset or security with delinquent taxpayer, or third party does not make an obstacle to tax collection.

8. Recovery of delinquent tax from securities

In order to collect receivables related to seized securities, and if the time for collecting delinquent tax on securities has already expired, or will be in the near future, and if direct collection which is beneficial for tax collection activities is better than monetization, receivables must be collected directly. If it cannot be collected, it is monetized.

9. Protection of Third Party Rights

If the third party to which delinquent taxpayer's asset belongs belongs cannot achieve the goal of retaining the asset due to transferring the asset to the tax office, the third party may decide to terminate the contract or continue to use the asset to make a profit, or income for 3 months.

Section Two. Recovery of the tax debt in an undisputable manner (Bank account seizure)

1. Bank accounts available for seizing

A bank account that may be seized for the purpose of recovering delinquent tax is a regular account (including a current account)and a savings account with the corresponding bank of the taxpayer.

2. Seizing procedure

- (1) When a bank account of the delinquent taxpayer is seized, the tax inspector shall send a letter of notification of seize debtor's bank account approved by the head of the tax office indicating the collection of the delinquent tax from the debtor's account.
- (2) The letter of notification should contain the following information:
 - Name, address and location of delinquent taxpayer, taxpayer's identification number;
 - Grounds for collection of tax and amount of delinquent tax;
 - Account type and amount of money;
 - Name and address of the bank;
 - Demand to stop the debit and expense transactions in full or in part;
 - The bank name and account number to which the money from seized account should be transferred.

3. Commencement of a legal effect

A legal effect of the seizure will commence when the tax inspector sends a letter of notification to the bank.

4. Bank obligation

- (1) The Bank shall transfer the amount of money equal to delinquent tax to the account of tax office accordance with the letter of notification on seizure of the bank account.
- (2) If the balance in the delinquent taxpayer's account is insufficient to cover the delinquent tax indicated in the notification letter, expense transactions, except for the payments of payables from the delinquent taxpayer's account according to the court ruling, is stopped in full or in part and the bank will transfer delinquent tax to the account of the tax office indicated in the notification letter.
- (3) The Bank shall notify the tax office of the transfer of the amount equal to the amount of the delinquent tax (for both of either transferred in full, or in parts).
- (4) If the delinquent tax is fully paid and the tax office annulled the seizure on the basis of the notification letter described in (3), the tax office shall notify the bank

within 3 business days.

Section Three. Seizure of receivables

1. Definition of receivables

Receivables are receivables, such as sales revenue, bank accounts, rental payments and salaries that can be received in cash, or an asset that can be monetized. However, an intangible asset that can be considered as an receivables is seized based on its characteristics, suitability for collection aa well as receivables which is recovered through monetizing.

2. Selection of receivables for seizure

Receivables that are easy to collect are subject to seizure, and an example of receivables with a high probability of receipt:

- receivables of individuals from a government organization
- receivables of small business entity from a big business entity
- pledged receivables
 - * With regard to similar receivables, receivables that can be collected easily is seized first.

3. Seizing procedure

In the case of a seizure of receivables, letter of notification on seizure of receivables will be delivered to third party with payables (person with payables to the delinquent taxpayer).

"Delivery of letter of notification on seizure of receivables" is the prerequisite for the commencement of legal effect of seizure of receivables, so it must be sent by mail, or delivered in person. The letter of notification on seizure of receivables should reflect the transfer of the proceeds to the tax office at the time of the receipt of the receivables and transfer of proceeds from the receivables to the tax office immediately after the due date.

Copy of the Act on seizure shall reflect prohibition to appropriate proceeds from the receivables, transfer to others and take other measures and copy of the act will be delivered to the delinquent taxpayer after seizing.

4. Determination of receivables

During the seizure, persons with receivables (delinquent taxpayer), the type and an amount of receivables, content of the payment and the date of creation of receivables

should be clarified.

5. Scope of receivables subject to seizure

Receivables may be seized on full amount, but if amount of delinquent tax is less than the amount of the receivables, it may be seized on the amount of the delinquent tax to be collected.

* In case, if financial and payment capacity of the third party with payables as well as date of payment are unclear, the receivables cannot be seized partially, even in case delinquent tax is less than the amount of the receivables.

6. Confiscation of the documents related to the receivables

If necessary, the document related to the receivables (for example, documents on a consumer loan, bank guarantee, etc.)may be confiscated during the seizure of receivables. In this case, a tax inspector will take these documents on receivables in own possession. In case of confiscation of a document related to the receivables an "Act on confiscation" is issued and copy of the act will be delivered to the delinquent taxpayer and other persons related to the seizure.

However, if documents were confiscated during seizure or on inventory audit, and name of confiscated documents reflected in the act on seizure or on inventory audit, then these acts can be considered as an act on confiscation.

7. A legal effect of seizure

(1) Commencement of a legal effect

The legal effect of seizure of receivables will commence when letter of notification on seizure is delivered to the tird party with payables.

(2) Prohibition of payment of receivables

A third party is prohibited from paying receivables to delinquent taxpayer.

(3) Prohibition to get the receivables

Delinquent taxpayer will not be able to get the receivables, transfer, release and extend the due date after seizure of the receivables. Delinquent taxpayer is not allowed to amend or cancel the contract that served as the basis for their receivables. The copy of the act on seizure to be delivered to the delinquent taxpayer should reflect that aforementioned actions related to receivables are prohibited.

- * If the delinquent taxpayer has taken actions such as getting the receivables already, the third party with payables must to pay to the tax office.
- (4) A legal effect of seizure of fixed income

A legal effect of seizure of fixed income, sych as payroll, retirement and rent payments (hereinafter referred to as "receivables such as payroll") is limited to the amount of delinquent tax and will be applied to income received after seizing.

- * For ordinary receivables, such as payroll, a letter of notification on seizure will be delivered to the individual or business entity responsible for paying it. This letter of notification on seizure will be valid for the amount of delinquent tax, so re-seizure is not required every time when an income is received. The letter of notification on seizure must clearly state that it is seized "until recovering of the amount of delinquent tax" For receivables, such as remuneration, an amount prohibited to seize is specified as described in the Labor Law. However, it does not apply to the case when the delinquent taxpayer agrees to transfer prohibited amount to the tax office.
- (5) Right to collect receivables

Seizure of receivables means that the receivables can be collected.

Accordingly, invoices can be issued to exercise the right to collect receivables in case if due date for the payment has expired, and it can be considered that the delinquent tax was collected, limited to the amount of monetary asset if it was collected in the monetary asset, and if it was not monetary asset, the appropriate seizure will be carried out depending on the types of assets.

If third party with payables does not pay, even it was due date, the claim will be sent in written, in case if the third party does not pay it is required to take measures (including a claim to the court) necessary to collect receivables.

Section Four. Seizure of the immovable properties, aircrafts, road vehicles and construction equipment

1. Seizure of the immovable properties

Matters relating to the limitation of immovable properties subject to seizure, seizure of the immovable properties, commencement of the legal effect, use the immovable property to make a profit, or income should be regulated as follows:

- 1.1. Immovable properties subject to seizure is limited as follows:
 - Immovable properties described in the Civil code (Land and assets that cannot be used for their original purpose when they are in separation) Article 84.3 of the Civil code.
 - 2) Asset rights aimed at immovable property (the right to use land for the purpose of land ownership)

- 3) Assets that are considered as immovable properties (industrial fund, mineral fund etc.)
- 4) Assets covered by the provisions regarding immovable property (mining rights)
- 5) Assets that can be considered as immovable property (railway fund)
 - Buildings under construction (in terms of the use of the building, the building has not reached the level of utilization as expected)may be seized as movable property.
 - For unregistered buildings (not registered as buildings), construction drawings and drawings of each floor must be developed, which will be attached to the registration form for registration of the seizure and then the seizure will be registered.
- 1.2. Seizure of immovable property shall be carried out and its commencement of the legal effect will be determined as follows:
 - 1.2.1. In seizing the immovable property, a sheet on seizure will be delivered to the delinquent taxpayer. If the immovable property is seized, the registration of the seizure shall be made by the state registration office to ensure that the third party can not file a claim.
 - When executing a seizure, be careful not to give a copy of act on seizure to the delonquent taxpayer, since the sheet on the seizure will be issued and delivered to the delinquent taxpayer, and inform the person entitled to pledge rights about the seizure.
 - 1.2.2. The legal effect of the seizure shall commence when the tax inspector sends a sheet on seizure to the delinquent taxpayer. However, if seizure was registered prior to the delivery of the sheet on seizure, legal effect of the seizure shall commence from the moment as the seizure is registered.
- 1.3. Use of seized immovable property to make a profit, and income

A delinquent taxpayer or a third party who has the right to use and make profit, or income is allowed to do so legally. However, in the case it becomes clear that the taxpayer intends to undertake the action that might lead to a sharp decrease in the value of the immovable property, then the tax administration may restrict the use and generation of profit and income from the immovable property.

✤ As for the means of demonstrating restrictions on the use and generation of profit and income from the immovable property, there may be concrete actions, such as installing a vertical board with a written notice of the restriction on the conduct of activities or issuing orders notifying the restriction.

2. The seizure of the aircrafts

The seizure of the aircrafts, commencement of the legal effect, and temporary break in use of aircrafts es well as permission to use them shall be implemented as follows:

- 2.1. The seizure of the aircrafts (eg. registered aircraft and helicopters. Hereinafter it will have same meaning) and commencement of the legal effect.
 - 2.1.1. The seizure of the aircrafts shall be implemented upon delivery of the letter of notification to the delinquent taxpayer. If the aircraft is seized, the seizure must be registered with the state registration authority in order to exclude the possibility of a third party's claim.
 - In the case of an aircraft that becomes impossible for a third party to make a claim after registration with the State Registration Authority, it is considered as immovable property as to distinguish it from ordinary movable property.
 - An aircraft without state registration and aircraft that cannot be registered due to a lack of out engine will be seized as movable property. When executing a seizure, be careful not to give a copy of act on seizure to the delonquent taxpayer, since the sheet on the seizure will be issued and delivered to the delinquent taxpayer, and inform the person entitled to pledge rights about the seizure.
 - 2.1.2. A legal effect of seizure shall commence when the tax inspector sends a letter of notification to the delinquent taxpayer.

However, in the case the registration of the seizure has taken place before the delivery of the letter of notification on seizure, the legal effect of the seizure shall commence upon the registration of the seizure.

Also, when the measures on safeguarding and storage of the seized aircrafts have been taken before delivery of the letter of notification on seizure, the legal effect of the seizure shall commence during the undertaking such measures.

- 2.2. Break in use of aircraft and permission to use it
 - 2.2.1. If necessary for the collection of delinquent tax, by decision of the head of the tax administration, a temporary break in use of aircraft is possible, with the exception of the aircraft, which is ready to take off.
 - 2.2.2. If necessary for the collection of delinquent tax, the necessary measures on safeguarding and storage of the seized aircrafts can be taken.
 - ✤ "Safeguarding" means measures to prevent a change in the location in

which the asset is situated, and "storage" is a measure that preserves the effectiveness of the asset. However, safeguards can be carried out regardless of whether they were undertaken before or after the seizure. The "necessary measures" include placing the aircraft in a warehouse, the presence of the person in charge, obtaining a certificate of registration of an aircraft etc.

2.2.3. If the aircraft is seized or the aircraft is stopped pursuant to the GTL, and there is good reason, then permission to use the aircraft can be issued at the request of the delinquent taxpayer, person with pledge rights and other persons with similar rights, if there are good reasons for this.

3. Seizure of the road vehicles and construction equipment

Seizure of the road vehicles and construction equipment, commencement of the legal effect, relations arising as a result of their transfer to the tax administration's possession, their storage and movement shall be as follows:

- 3.1. The seizure of the road vehicles and construction equipment (eg. registered road vehicles and construction equipment. Hereinafter referred to as " road vehicles and construction equipment ") and commencement of the legal effect.
 - 3.1.1. The seizure of the road vehicles and construction equipment shall be implemented upon delivery of the letter of notification to the delinquent taxpayer.

If the road vehicles and construction equipment, the seizure must be registered with the state registration authority in order to exclude the possibility of a third party's claim.

- In the case of the road vehicles and construction equipment that become impossible for a third party to make claim after registration with the State Registration Authority, it is considered as immovable property as to distinguish it from ordinary movable property.
- The road vehicles and construction equipment, small road vehicles that cannot be registered will be seized as movable property.
- When executing a seizure, be careful not to give a copy of act on seizure to the delonquent taxpayer, since the sheet on the seizure will be issued and delivered to the delinquent taxpayer, and inform the person entitled to pledge rights about the seizure.
- 3.1.2. The legal effect of the seizure shall commence upon delivery of a sheet on seizure to the delinquent taxpayer.

However, in the case the registration of the seizure has taken place before the delivery of the letter of notification on seizure, the legal effect of the seizure shall commence upon the registration of the seizure.

Also, notwithstanding previous provision, when the measures on safeguarding and storage of the seized road vehicles and construction equipment have been taken before delivery of the letter of notification on seizure, the legal effect of the seizure shall commence during the undertaking such measures.

- 3.1.3. If necessary for the collection of delinquent tax, the necessary measures on safeguarding and storage of the seized aircrafts can be taken.
 - "Safeguarding" means measures to prevent a change in the location in which the asset is situated, and "storage" is a measure that preserves the effectiveness of the asset.

However, safeguards can be carried out regardless of whether they were undertaken before or after the seizure.

The "necessary measures" include placing in a garage, confiscating technical inspection slip etc.

- 3.2. Transfer of the road vehicles to the tax administration's possession, their storage and movement
 - 3.2.1. Make an order to take under the tax administration's possession

If the road vehicles and construction equipment were seaized on the basis of a decision of the tax administration, they can be transferred to the tax administration's possession through a tax inspector on the basis of an order.

- 3.2.2. Measures to be taken by the tax inspector to take under the his/her possession
 - 3.2.2.1. Taking possession of road vehicles and construction equipment which belong to the delinquent taxpayer, or his/her family member, or person with special relationship with the delinquent taxpayer. In case if the road vehicles and construction equipment were transferred to the tax inspector on the basis of demand of tax administration to transfer the road vehicles and construction equipment then tax inspector shall take them under his/her possession.

If the taxpayer has not transferred road vehicles and construction equipment to the tax inspector in accordance with the demand, the taxpayer shall take the road vehicles and construction equipment under his/her possession by means of enforcement measures.

3.2.2.2. Taking possession of road vehicles and construction equipment which belong to the third party other than the delinquent taxpayer, or his/her family member, or person with special relationship with the delinquent taxpayer

> A tax inspector can take control of the assets directly if they have been transferred to the tax inspector, but in case of refusal to transfer the assets, they will be taken under tax administration's possession on the basis of the order for their transfer.

> With regard to the requirements, measures and results of this transfer, the provisions regarding to the seizure of movable assets belong to third parties shall apply. Before delivering an order to the third party, a written or oral order will be given to the delinquent taxpayer to transfer the assets to the tax administration.

If the delinquent taxpayer refuses it, then third party will be given an order on transfer the assets to the tax administration and the delinquent taxpayer will be informed about this. The deadline for the transfer is within 5 business days from the day the order was sent. The road vehicles and construction equipment can be taken directly under possession of tax administration if these assets were transferred within a specified period of time or even if the deadline was expired.

However, if a third party makes a claim, it can be used for up to three months, taking into account the period specified in the contract.

3.2.3. Storage of the road vehicles and construction equipment that were transferred to tax inspector's possession, with the delinquent taxpayer, or third party.

The tax inspector may store road vehicles and construction equipment that were transferred to his/her possession, with the delinquent taxpayer, or third party without moving them from their location.

In this case the tax inspector shall issue an "act on the transfer of the seized property into possession" indicating in written that those assets are under possession, and make it clear that such road vehicles and construction equipment are at his/her possession by placing a seals on them and other methods to inform the public about this. In addition, in a case other than the case when permission was given to use or move such

road vehicles and construction equipment, the tax inspector must take appropriate measures prohibiting their use.

Along with a clear statement of the aforementioned "taking under tax inspector's possession", publicly accessible leaflets and tire blocking measures can be used as "appropriate measures" to prevent the movement of road vehicles and construction equipment.

- ✤ A tire lock is a metal tire that can be locked in a car to make it impossible to move it and, if a car is seized, it is used after transferring it to tax inspector's possession on the basis of an order to transfer it to the tax administration. In addition, a public announcement sheet will be placed in visible places for the driver and on the rearview mirror.
- 3.2.4. Permission to use road vehicles and construction equipment that were transferred to the possession

In the case of a reasonable excuse, the tax administration may allow to use of the road vehicles and construction equipment, that are under its possession on the basis of a request from the delinquent taxpayer, persons with pledged right and other rights.

3.2.5. Use and storage of the road vehicles and construction equipment

In the case of monetization of seized road vehicles and construction equipment, tax inspector must take them under his/her possession before monetization. Just seizing or taking under possession is not enough, because delinquent taxpayer may avoid bidding at auction by hiding or damaging machinery and construction equipment.

Therefore, the tax inspector needs to take it under his/her possession and move it away and store it. In this case, an "act on transfer of seized assets" is be issued indicating the transfer and possession. An "Act on confiscation" is also issued, if technical inspection slips etc. have been confiscated. As the taxpayer inspector has the responsibility to keep a watchful eye on transferred road vehicle storage, it is necessary to take steps to prepare and keep proper storage space in place.

Section Five. Seizure of intangible property

Movable assets, securities, deposit accounts, receivables, immovable property and assets not covered by seizure of aircraft, road vehicles and construction equipment are considered as "intangible assets" and classified as used and not used by third party (assets that not used the third party with payables and similar persons).

The seizing procedure for each classification is provided.

- 1. Seizure of intangible assets that not used by third party with payables, commencement of the legal effect.
 - 1.1. Types of intangible assets that not used by third party with payables
 - 1) Patent rights, a right to use inventions in practice, design rights, and trademark rights
 - 2) Copyright (and related rights)
 - Industrial property rights, such as patent rights are created by registration (Patent law and other related laws).

Copyright, which is an intangible asset, with the exception of industrial property rights, is created by author's work (and drama etc.), but in the case of transfer of this right, a third party cannot claim registration of this right.

- 1.2. Seizure and commencement of its legal effect
 - 1.2.1. Seizure of intangible assets that not used by third parties with payables, such as patent rights, copyrights etc. is carried out by delivering a letter of notification on seizure to the delinquent taxpayer.

In the case of transferring an intangible asset (the right), if assets requiring registration are seized, then registration of the seizure must be made at the appropriate registration authority.

- When executing a seizure, be careful not to give a copy of act on seizure to the delonquent taxpayer, since the sheet on the seizure will be issued and delivered to the delinquent taxpayer, and inform the person entitled to pledge rights about the seizure.
- 1.2.2. The legal effect of the seizure shall commence when the tax inspector sends a sheet on seizure to the delinquent taxpayer.

However, in the case of copyright and related rights that cannot be claimed by a third party after their registration, if the seizure was registered prior to the issuance of the sheet on seizure, the term of the operation on seizure begins from the moment the seizure is registered.

- 1.2.3. However, in case of patent right, a right to use inventions in practice, design rights, and trademark rights of which term of the operation on seizure begins from the moment of the registration, term of the operation on seizure will begin after the seizure is registered.
- 2. Seizure of intangible assets that not used by third party with payables, commencement of the legal effect
 - 2.1. Types (mail types) of intangible assets that not used by third party with payables and persons related to the third party with receivables
 - 1) Right to apply and use of industrial property rights (patent rights, a right to use

inventions in practice, design rights, and trademark rights)..... person entitled to the each industrial property right

- 2) Printing rights ... copyright
- 3) Rental right ... the tenant
- 4) The percentage of members of different associations ... each association
- 5) The percentage of employees of each company each company
- 6) Joint ownership of movable assets ... other co-owners
- 2.2. Seizure and its validity term
 - 2.2.1. Seizure of the industrial property right and intangible rights used by third party with payables, the seizure is carried out when the tax inspector sends a sheet on seizure to the third party with payables.
 - When executing a seizure, be careful not to give a copy of act on seizure to the delonquent taxpayer, since the sheet on the seizure will be issued and delivered to the delinquent taxpayer, and inform the person entitled to pledge rights about the seizure.
 - 2.2.2. The term of the operation on seizure will commence when the tax inspector sends a sheet on seizure to the delinquent taxpayer.

If registration of seizure of assets requiring registration prior to the issuance of delivery of the sheet on seizure, the term of the operation on seizure begins from the moment of registration of the seizure.

However, in case of exclusive rights on an application or use of industrial rights, notwithstanding previous provision, term of the operation on seizure begins after the seizure is registered.

CHAPTER SEVEN. CANCELLATION OF THE SEIZURE

1. Conditions to cancel the seizure

With the cancellation of the seizure, it will no longer be possible to take any actions that may result from the seizure. Therefore, cancellation does not affect measures the action (partial collection and withholding)taken already in the result of seizure.

There are two (2)cases where a seizure must be cancelled and one that is possible to cancel.

1.1. Cases where the seizure must be cancelled

- 1) When total amount of delinquent tax of the taxpayer to be seized is canceled due to payment, withholding and other reasons
- 2) When the value of the seized assets is no longer able to exceed the total amount of expenses for collecting delinquent tax to be seized and the total amount of other receivables, which have the preferential rights for priority over the delinquent tax to be seized.
 - In case, it is required to cancel the seizure, upon acceptance of a request from a third party to replace seized asset.

1.2. Cases where the seizure may cancel

- In case, a portion of the delinquent taxes subject to seizure was paid and withheld, some were cancelled as a result of correction made to tax return, when it is recognized that the value of the seized assets exceeds the total amount of delinquent taxes to be seized and receivables, which have the preferential rights for priority over the delinquent tax due to an increase in the value of the seized assets and for other reasons.
- 2) In case, seizure of other assets suitable for seizure, provided by the delinquent taxpayer
 - In addition, the possibility of seizure includes cancellation on the basis of a request from a taxpayer when he/she enjoyed tax credit

2. Measures for cancellation of the seizure

Cancellation of a seizure can be implemented by notifying the delinquent taxpayer in written ("notification of cancellation of seizure").However, cancellation of a seizure of intangible assets used by third parties with receivables and payables will be implemented by notifying the third party with payables. Effect of canceling seizure commences upon delivery of notification of cancellation to the delinquent taxpayer or to the third party with payables.

3. Measures for cancellation of the seizure

1) Notifying the delinquent taxpayer

In case of cancellation of the seizure of intangible assets used by third party with receivables and payables, the taxpayer will be notified of this.

2) Notifying persons, such as person with pledge rights

In case of cancellation of the seizure, the person with pledge rights and the person requesting the withholding will be notified of the cancellation of the seizure and other necessary information.

3) Removal of seals and markings

Seals and markings as well as other things used to clarify that the asset has been seized, are removed when the seizure was cancelled.

4) Return of assets

If the seizure is canceled, the asset must be returned if there are any available assets.

If the seizure is canceled, the seized property will be returned to its former place, but if the seizure should be canceled for reasons (cancelled due to correction is made to tax return etc.)related to the person having the receivables, it should be carried out in the original place of the asset when seizure was made.

Although the person receiving the returned asset is, in principle, the delinquent taxpayer, but if the asset was owned by a third party during the seizure, the asste must be returned to the third party, unless the third party wants to return the asset to the delinquent taxpayer.

5) Deregistration of seizure

In case of cancellation of a seizure of immovable property and other assets, the deregistration shall be made by the relevant registration authority.

CHAPTER EIGHT. REQUEST FOR WITHHOLDING

The request for withholding is a system for collecting delinquent tax by monetization of the taxpayer's assets during the enforcement operations and receiving part of the proceeds from allocation.

1. Conditions to make a request for withholding and scope of the request

- 1.1. A possible condition for making a request for withholding includes ① monetization of the taxpayer's assets during enforcement operations is being implemented, and ② there is a delinquent tax.
 - Monetization of the taxpayer's assets during enforcement operations means the implementation of measures to recover delinquent taxes, enforcement measures, auctions and bankruptcy in respect of taxpayer assets with the aim of exercising pledge rights.
 - The tax that may be requested for withholding is a tax that has not been paid before the due date, regardless of whether a tax pre-invoice has been delivered.
- 1.2. The asset is seized without request for withholding, if delinquent taxpayer has assets that is easy to monetize and assets that is without third party rights and it is considered to recover delinquent tax fully.

2. Procedure of making request for withholding

2.1. When making a request for withholding, "request for withholding" shall be delivered to the organization implementing monetization.

In the event of a request for withholding, the delinquent taxpayer and person with pledged rights to the assets subject to seizure will be notified via the "notification of request for withholding".

- In the event of bankruptcy, request for withholding simply means that there is a delinquent tax, so there is no need to need to notify the delinquent taxpayer and person with pledged rights to the assets.
- 2.2. Time to make request for withholding:
 - 1) In the event of delinquent tax settlement
 - Monetization of assets through sale prior to the day of decision on sale is made
 - Monetization of assets through confiscation at the moment of confiscation
 - 2) In case of implementation of enforcement measures
 - Immovable property, aircraft, road vihecles, and construction equipment final date of allocation of proceeds determined by the executor

of court decision

- Movable property until the executor of enforcement measures has been paid for the sale proceeds
 - Monetary payment or receivables based on movable asset up to the time prescribed by the law
- 3) Auction, where pledge rights are exercised until the time provided by the law enforcing a court decision

3. Termination of monetization and cancellation of request for withholding

In case of cancellation or termination of enforcement monetization operation carried out by the executing organization, that receives the request for withholding, the request for withholding is not valid. In this case, no action is required to cancel the request for withholding.

4. It is possible to get part of the proceeds, even if the assets were transferred after the monetization process has been started by the implementing organization.

5. Measures to terminate a request for withholding

- 5.1. If delinquent tax has been cancelled due to payment, correction of the tax return and other reasons, the request for withholding shall be terminated.
- 5.2. The cancellation of request for withholding shall be informed of implementing organization through the "Notification on cancellation of Request for withholding". If the request for withholding is terminated, the delinquent taxpayer and the persons, such as person with pledge rights will be notified via the "Notification on cancellation of Request for withholding".

CHAPTER NINE. OPERATIONS ON MONETIZING THE ASSETS

In cases where the assets seized are assets other than monetary assets, they are monetized and delinquent tax is withheld from monetization proceeds.

The enforcement of a measure to convert assets seized into a monetary asset is called "monetization".

In a broad sense, monetization can be done by (1) seizure of receivables, (2) sale of assets, but in a narrow sense it is called as "monetization through sale of assets".

In principle, it is better to collect receivables, but they can be converted into cash by selling them. As for other assets, they are, in principle, converted into cash by sale, but can be converted into cash through confiscation. Also, if the confiscated assets are assets other than cash, they will be seized and monetized. In principle, monetization in the narrow sense can be done through an auction, but it can be done through a direct contract.

1. General rules for monetization

1.1. Type of monetization method

- 1) An "auction", sale with free competition
 - For monetization, it is necessary to set the initial price, organize a free competition between the parties requesting to purchase the asset, and decide to sell the asset to the person who has offered the highest price above the initial price, and sell it. This is a general principle of monetization.
- 2) "Direct contract" for sale to a particular person

In the event that it is inappropriate to organize free competition for the sale of an asset that has been seized, a specific person must be identified as the buyer and the asset must be sold to that person.

1.2. Restrictions for monetization

Monetization of seized assets is restricted in the following cases:

- 1.2.1. Restrictions for monetization depending on the quality of the assets Monetization is restricted for unripe fruits and in case of products in the process of production etc., until they are ready for normal circulation.
- 1.2.2. Restrictions for monetization in case of grace period for paying taxes Monetization shall be restricted at a time of grace period for paying taxes.
- 1.2.3. Restrictions for monetization order

Monetization of an asset of a secondary person with tax payment obligations and a guarantor, is carried out after the monetization of the delinquent taxpayer's asset.

- 1.2.4. Restrictions for monetization in case of complaint
- 1.2.5. Restrictions for monetization during court proceedings

Monetization is restricted after filing a complaint, until a court decision is made.

1.3. Restrictions on buyer of seized assets

- 1.3.1. It is forbidded to purchase the assets be delinquent taxpayers, tax inspectors and tax officials. The delinquent taxpayer shall have no right to purchase directly or indirectly assets to be monetized. Also, the tax inspectors shall have no right to purchase the assets in order to ensure fairness in their work.
- 1.3.2. Restrictions to buyers

The person who buys drugs, poisons, narcotics, etc. must have a certificate on their use

1.3.3. Transfers subject to permission

Assets that need government permission (gunpowder, gun, etc.)

2. Organization of auctions

2.1. The importance of the auction

Auction is a procedure for monetizing seized assets, based on organization of free competition between the parties requesting to purchase of an asset, by selling the asset to the person who has offered the highest price above the initial price.

2.2. Preliminary preparation for the auction

Preliminary preparation for the auction is an important task for auctioning. Proper preparation will also greatly affect auctions.

2.2.1. Delivering preliminary notification on auction

Before delivering preliminary notification on auction to the delinquent taxpayer, the delinquent taxpayer must be reminded to pay their taxes, and the "preliminary notification on auction" must be sent to prevent potential disputes and issues that may arise from the auction.

2.2.2. Check if the auction is possible

It is required to check following issues and their implementation, such as whether there is a grace period for paying taxes, whether a tax pre-invoice, copy of act on seizure, notification on seizure and a sheet on seizure have been delivered, whether the asset has been registered, wether the asset has been stored in accordance with an order, whether there are seal and a public announcement notice, is there any notice with regard to assets belong to third party, whether an auction should be held in relation to the rights of third parties, wether there is a secondary tax obligation.

2.3. Public announcement of the auction and notification of persons related to the

auction

2.3.1. Public announcement

The purpose of the "Public announcement" is to increase the demand for the purchase of an asset and receive effective profitable requests, and this is announced on the notice board.

In principle, the asset name, auction method, initial price, date, time and location, etc. will be announced to the public until the day preceding 10 days before the date of the auction.

When auctioning an asset, a "detailed list of the auction assets" should be prepared with a description of the asset, a location map, location, etc., which should be distributed to persons who want to purchase the asset.

2.3.2. Notification of persons related to the auction

If the auction has been publicly announced the delinquent taxpayer, the person requesting the withholding, and the person with pledged right on the auction assets, will be notified via the "notification on auction". It should also be announced that a notice of a request for receivables must be submitted the day before the decision to sell.

2.4. Setting an initial price

2.4.1. Setting an initial price

In the case of an auction, it is necessary to set the initial price. In this case, the initial price will be calculated based on the specifics of the auction in accordance with the procedure set out in the Law on Enforcement of Court Proceedings. It is also possible to get expert advice if needed.

2.4.2. Public announcement of the initial price

In the event of bidding or auctioning of immovable property, aircraft, road vehicles and construction equipment, the initial price shall be indicated in the" public announcement notice of the auction " and announced.

- When conducting the auction, the proceeds from the monetization of seized assets should be as high as possible, taking into account the benefits of the persons with receivables, delinquent taxpayer and other interested parties.
- 2.4.3. Pledge money to participate in the auction

The person that wishes to participate in the auction shall pay the pledge money (more than 10% of the initial price) that have been set by the head of the tax administration. The participant that paid the pledge money shall have right to participate in such auction.

2.5. Methods of organizing auctions depending on the place of auction

There are two methods to organize auctions, for example, indoor method and electronic method. In case of first method, this is carried out by submitting an application for participation in the auction and participation in the auction without using the Internet. The next method is to select a person who works with the auction website (a service that can bid on the Internet)as the auctioneer (website provider)and to organize the auction using that auction website.

2.6. Auction Method (from tender or auction process to selection of the person who offered highest price)

2.6.1. The tender and bidding under indoor method shall be organized as follows.

2.6.1.1. The indoor tender method is a method of auction, which is organized on the date and at the place described in public announcement notice of the auction and in which persons wishing to acquire an asset send bidding documents and bid against each other, provided that the applicants do not know the price offered by each of them.

This method includes "due date tender" and "periodic tender".

The method in which bidders, knowing the price offered by each other, increases the price at a place and on the date indicated in a public announcement notice is called the "due date bidding" method.

According to this method, bidding is carried out taking into account the initial price as the lowest price, and the last bid price of the tender is called three times, and bidding continues until the highest bid price.

2.6.1.3. In the result of auction, person who offered tender price above the initial price, or person who offered highest bid price will be selected as the buyer.

Once the person, who offered highest price has been identified, the end of the tender and auction will be announced after announcement of the winner's surname, name and the highest price. In case, if the auctioned asset was asset other than movable property, securities and intangible assets with third parties with payables, then the highest bidder's full name, price, date and time of the decision to sell will be notified to the delinquent taxpayer and the related parties and public announcement will be made.

All participants except the highest bidder will receive a refund of the pledge money within 3

business days. After that, measures concerning the implement the decision to sell, payment, and transfer the rights will be taken.

2.6.2. The following methods of electronic tendering and bidding can be implemented: (except for (6), tendering and bidding is the same.)

- 1) An auction and lowest initial price of the asset will be announced online through the auction program on the of tax administration's website.
- 2) The person wishing to participate in the electronic auction will make the request and pay the pledge during the application period.
- 3) The head of the tax office, who has accepted the application for participation, will conduct an Internet auction and will notify participants of the application, providing the username and password needed to log in, and confirming their participation in the auction.
- 4) Registration is closed in 30 minutes before the auction.
- 5) Approximately 1 week after the close of registration, a bidding period (2-3 days)will be established and purchase requests will be received from participants.
- 6) In case of bidding method, the bidder can log in during the bid period, see the bid prices of other participants, and change the bid price several times (price offer cannot be lowered). In case of tender, the participant will not be able to see the the price of the tender of other participants, so they may offer only once.
- 7) On the day after the deadline for submission of request, the buyer is identified as the person who offered highest price than initial price among all participants and public notification will be made. All participants except the highest bidder will receive a refund of the pledge money within 3 business days. After that, measures concerning the implement the decision to sell, payment, and transfer the rights will be taken.
- 8) Upon expiration of the tender period, all members of working group will review and sign the participants' notes.

3. Sell by direct contract

- 3.1. It is possible to sell by a direct contract in the following cases:
 - 1) the asset is unsuitable for auctioning, or it is perishable;
 - 2) if it is possible to sell the asset listed at the market price quoted on the same day
 - 3) there were no participants in the auction organized two times, or the offered purchase price was less than the initial price, or the buyer has changed the decision on purchase due to the failure to make the payment by the due date.

3.2. When executing sale by direct contract (1) in principle, inform about the sale through direct contracts, (2) announce the initial price if required, (3) make decision to select a buyer on the day of sale, (4) announce the final decision on the assets to be sold and announce it publicly.

Measures of sale, payment, and transfer of asset are similar to those of auctioning.

4.Decision to sell

4.1. A decision to sell is a decision to sell assets that should be monetized to those who have offered the highest price, or with whom a direct contract is made.

According to the decision to sell, a purchase and sale obligation arises between the buyer and the delinquent taxpayer, and the person who received the decision will be required to pay the proceeds.

4.2. Regarding the day the decision to sell is made, (1) if the asset to be monetized was movable property and security, then the day of the decision to sell will be the day when the auction is organized or when the sale is carried out under a direct contract, (2) in respect of other assets the day of the decision to sell will be the next day 7 days after the sale at auction or by direct contract.

5.Payment for the purchase and the amount

5.1. Payment for the purchase

The buyer pays payment for the purchase by cash or bank transfer.

If the buyer fails to pay by due date, the head of the tax administration may cancel the decision to sell.

5.2. The result of paying for the purchase

If the buyer pays for the purchase, he/she will receive the right to own the asset from the delinquent taxpayer. The public auction announcement should state that if the buyer paid for

the purchase, he/she would be liable for any losses caused by damage to the monetized assets.

5.3. A tax inspector shall consider that delinquent tax from the delinquent taxpayer is deemed to be recovered equal to the amount of purchase payment received.

6.Transfer of rights

6.1. Delivering notification of decision to sell

In the case of assets other than securities, buyers are provided with a "notification of decision to sell". As for movable propertys, "notification of decision to sell" can not be delivered.

6.2. Transfer of rights

During transfer of rights, assets that are in possession of the tax inspector, such as movable assets will be transferred, registration on the back side of the securities, the registration of the transfer and the registration of the pledged rights shall be deregistered, "notification of decision to sell" will be given to the third party with a payables, and the guarantee sheet will be provided.

CHAPTER TEN. ALLOCATION OF THE PROCEEDS FROM MONETIZATION

1.The importance of allocation

The allocation is the measure by which proceeds received from delinquent tax settlement, such as proceeds from monetization of seized assets and proceeds received from third parties with payables is allocated to the taxes (including tax collection cost) related to such seizure or other receivables.

2. Proceeds to be allocated

The Proceeds that is required to be allocated will include the following:

2.1 Proceeds from the sale of seized assets;

2.2 Money received from a third party with receivables through seizure of securities, receivables or intangible assets;

2.3. Seized monetary asset;

2.4. Money received based on request for withholding.

3.The principle of allocation

3.1. Allocation of proceeds from monetization

The proceeds described in the previous paragraphs 2.1.1 and 2.1.2 (hereinafter referred to as "proceeds from monetization")shall be allocated to the following taxes and other receivables.

3.1.1. Tax related to the seizure;

3.1.2. Taxes requested for withholding;

3.1.3. Pledged receivables and mortgage receivables under mortgages, related to seized assets.

3.2. Withholding of seized money

Proceeds described in the previous paragraphs 2.1.3 and 2.1.4 will be withheld for tax related to the seizure or a request for withholding.

3.3. Returning of remaining funds

Any funds remaining after the allocation of the proceeds referred to in the paragraphs 3.1 and 3.2, shall be returned to the delinquent taxpayer.

3.4. Adjustment between taxes and other receivables

In the event that proceeds from monetization are insufficient to cover the total amount of taxes specified in paragraph 3.1 and other receivables, the order of allocation of funds and amount to be allocated shall be determined in accordance with the principle of priority of taxes and the Civil code and other laws.

3.5. Collection cost of basic tax is reimbursed first.

In addition, if the proceeds allocated for tax in accordance with paragraphs 3.1 or 3.2 is withheld for the basic tax, losses and fines, then the proceeds will first be withheld for the main tax.

4. Procedure of allocation

4.1. Check the amount of receivables

When allocating the proceeds, persons with receivables, receiving the allocation and allocation amount are checked first.

4.1.1. Request for receivables

The person with receivables must submit a "Request for receivables" to the tax administration until the decision to sell is made. The request includes principal amount of the receivables, interest, and the maturity date, etc.

4.1.2. Checking the amount of receivables

The head of the tax administration will accept the request for receivables and check an amount of receivables. Also, if there is no request for receivables, the head of the tax administration will check an amount of pledged receivables and mortgage receivables.

In case of pledged receivables, a person who has with unregistered receivables referred to in 3.1 above does not make request for receivables, proceeds are not allocated to a person with receivables until the decision to sell is made.

4.2. The issuance of the act on calculation of the allocations

When the tax administration makes allocations, it issues an act and sends the copy of the act on calculation of allocations within 3 (three)days after payment of proceeds from sale of assets to the following persons (it doesn't matter if this allocation is for this person or not):

4.2.1. The person, who determined amount of receivables and made request;

4.2.2. A person, who does not have a request determining the amount of receivables, but with account receivable, the amount of which has been determined by the survey of the head of the

tax administration;4.2.3. Delinquent taxpayer

4.3. Timing of the transfer of the proceeds from monetization

Timing of the transfer of the proceeds from monetization is set on the date shall be considered as a following day after 7 (seven)business days of delivery of the copy of the act on calculation of allocations. This date shall be specified in the copy of the act on calculation of allocations.

However, in the absence of pledged receivables and mortgage receivables, for which funds from proceeds can be allocated, 7 working days may be reduced.

4.4. Transfer of the proceeds from monetization

The amount of money specified in the act on calculation of the allocations, will be transferred on the day of the transfer of the proceeds.

Until the date of transfer of proceeds, it is possible to file a complaint connected with the the act on calculation of the allocations, and in the case of a complaint, it will be resolved taking into account the content of the case.

5. Priority of taxes

5.1. Principle of priority of taxes

In the event that taxes compete with other receivables during enforcement measure of monetization, taxes shall be collected first, in principle, before any receivables are covered.

• "Taxes shall be collected first" means collection of taxes before other receivables, in the event that allocation of monetization proceeds is not sufficient to cover all receivables during forced measure of monetization of delinquent taxpayer's assets.

5.2. Receivables with priority over taxes

5.2.1. Monetization costs

If a request for withholding is made during the forced measure of monetization of delinquent taxpayer's assets, monetization costs of that asset shall be reimbursed before the tax relating to the request.

5.2.2. Direct costs of tax collection

If an asset of a delinquent taxpayer has been monetized during delinquent tax settlement procedure, direct costs of tax collection shall be reimbursed before taxes and receivables.

5.2.3. Excise tax, gasoline and diesel fuel tax

In case of monetization of items subject to excise tax, gasoline and diesel fuel, the excise tax, gasoline and diesel fuel tax (excluding direct costs of delinquent tax collection)shall be collected before the other taxes and receivables.

5.2.4. The order of priority between taxes

With regard to priority taxes are arranged in the following order.

5.2.4.1. Priority connected with the seizing time

The seized tax shall have priority over the tax requested for withholding.

5.2.4.2. In the case of enforcement measure of tax collection, tax relating to the first request for withholding will have priority over the tax relating to the next request for withholding.

5.2.4.3. Priority of collateralized taxes

Collateralized taxes shall be collected from income monetization proceeds of collateralized assets before other taxes (excluding delinquent tax collection cost and excise taxes, gasoline and diesel fuel taxes).

5.2.5. Advantages of pledged receivables, mortgages or mortgage claims over third parties Pledged receivables, mortgage receivables or receivables with the preferential security interest of the third party will be collected before taxes (excluding delinquent tax collection cost and excise taxes, gasoline and diesel fuel taxes etc.). However, in the case of claim for receivables such as unregistered pledged receivables or unregistered receivables with the preferential security interest of the third party, the receivables will have priority over taxes if it is proved at the implementing agency that the receivables exist.

5.2.6. The claim relating costs of compensation for damage and the obligation to feed shall be withheld before taxes and other receivables, regardless of the provisions of the General Taxation Law.

CHAPTER ELEVEN. GRACE PERIOD FOR PAYING TAXES

In the event that the taxpayer is unable to pay the tax in time, it will be collected in accordance with the enforcement measures in principle. However, there are cases, when the enforcement measures may not be appropriate due to the personal circumstances of the taxpayer. The measure that can be taken in such cases is a grace period for paying taxes.

1. Conditions for granting grace period

In the case it becomes clear that a taxpayer is unable to pay tax due to one of the following circumstances, it may grant a grace period, extending the payment due date by up to one (1) year, limited to the amount of the taxes that is unable to pay:

1.1. Suffered from the disaster referred to in the provision 4.1.1 of the Law on protection from the disasters;

1.2. The taxpayer has paid expenses exceeding taxable income of previous year for medical treatment due to the illness;

1.3. The taxpayer ceased his/her/its business activities;

1.4. The taxpayer's business activity suffered from the substantial losses for 3 consecutive years and solvency worsened;

- "Unable to pay tax due to one of the following circumstances" means inability to pay delinquent tax due to loss or damage or deterioration of financial conditions. Accordingly, the amount of the tax which is subject to grace period will be limited to the amount of the expense or loss caused.
- The calculation of the amount of taxes that unable to pay and the amount payable in installments will be based on solvency.

2. Measures for granting grace period

A taxpayer wishing to enjoy grace period for paying shall submit a "taxpayer's request for grace period for paying taxes" to the head of the tax administration. The request for a grace period shall include the asset status and the financial capacity, but also a schedule of repayment based on them. If the request is accepted, a written notice will be delivered on whether the grace period is granted or not (it is same for extension of the grace period).

 A request for a grace period can be made only when the conditions necessary to obtain a grace period arise.

3.Security collateral for grace period

When granting grace period for paying taxes collateral is required. However, collateral is not required if amount of delinquent tax is less than 1 million tugrugs or the grace period is up to 3 months.

The items of collateral shall be immovable property, government securities and the assurance of the guarantor, procedure for holding asset as collateral is carried out in accordance with the Civil Code and the Law on Collateral for Immovable property.

4.The effect of grace period

4.1. During the implementation of the grace period for the payment of taxes, it is impossible to submit a new request for the tax, which is under grace period, and to take measures related to the collection of delinquent tax.

4.2. If the asset is seized, it can be cancelled upon request.

4.3. During the implementation of grace period, due losses will be reduced by 20%.

5.Cancellation

In the following case, the grace period is canceled and delinquent tax is recovered from the collateral:

5.1. During the grace period, a precondition arises for the early collection of risky delinquent tax, and it becomes impossible to collect delinquent tax during the grace period.

5.2. the taxpayer failed to pay the delinquent tax according to the schedule

5.3. Collateral changes were not allowed

5.4. Subsequent changes in the conditions have been considered as inappropriate for granting extension of the grace period

CHAPTER TWELVE. SYSTEM OF SECONDARY PERSONS WITH TAX PAYMENT OBLIGATIONS

1. General Provisions

The system of secondary persons with tax payment obligations is a method of collecting delinquent tax, that has been specifically introduced into law to oblige the taxpayer, who has clear relationship with delinquent taxpayer , which is unable to pay taxes (person who has primary obligation to pay tax).

1.1 Creation of an obligation to pay the tax

A secondary person that meets the requirements specified in this provision will be liable to pay taxes, if the taxpayer specified in the GTL fails to pay taxes.

*Changes in the conditions and requirements for the creation of a secondary obligation to pay tax after delivering a notification on the creation of a secondary obligation will not affect the secondary person that has been identified for an obligation to pay taxes.

* If, on the basis of a court decision connected with creation of a secondary tax obligation, the real situation for creating a secondary tax obligation has disappeared or the basis for issuing a notification has been changed, this notification will be canceled.

1.2. Relations between the secondary persons with tax payment obligations and delinquent taxpayer

The secondary obligation to pay taxes is an alternative, or additional obligation to pay the basic tax.

In other words, if an obligation to pay the basic tax failed and delinquent tax has been occurred, the amount of tax payment is insufficient to cover the basic tax due, then the secondary person will have alternative, or additional obligation to pay the basic tax and liability related to the obligation to pay the basic tax will also affect the secondary person with tax payment obligations as well.

1.2.1 Relations between the fulfillment of the obligation to pay taxes

In the event that a secondary person with tax payment obligations fulfilled its obligation, the basic tax due shall be reduced by the amount paid, and if the delinquent taxpayer fully fulfills the tax obligation, the secondary obligation to pay tax will be canceled.

1.2.2 Exemption from obligation to pay tax

The exemption from the obligation to pay the basic tax also applies to the secondary persons with tax payment obligations, but the exemption of secondary person from the obligation to pay the basic tax does not apply to the obligation of delinquent taxpayer to pay the basic tax.

1.2.3 Relation between the grace period and an obligation to pay tax

Measures such as notifications, tax pre-claim and delinquent tax settlement procedure cannot be taken with regard to secondary persons with tax payment obligations because grace period relating to an obligation to pay basic tax apply to is granted to this secondary person.

1.3 Measures to collect a delinquent tax from a secondary persons with tax payment obligations

1.3.1 Imposition of an obligation to pay tax by notification

In case of collection of delinquent tax from the secondary persons with tax payment obligations, the head of the tax administration sends a notification to the second party, which indicates the amount of tax due, the due date (20 business days after the notification is submitted), information about the land, premises and other necessary information. This notification is an official form of independent taxation and creates an obligation to pay taxes on the basis of the conditions for taxation of basic taxes, in which the secondary persons with basic tax payment obligations is identified.

In addition, the commencement of this obligation begins with delivery of the notification

* Notification can be sent to the secondary persons with tax payment obligations, regardless of whether the tax pre-claim was sent to the delinquent taxpayer.

In addition, a notification to the secondary persons with tax payment obligations should be sent at the moment when the taxpayer has a delinquent tax.

1.3.2 Tax pre-claim

If the person responsible for paying the tax has not paid the tax in full, the tax administration will send a tax pre-claim, except for the operation of " early collection of risky delinquent tax".

In this tax pre-claim it is necessary to specify the information that is relevant to the secondary persons with tax payment obligations, such as name and surname of the delinquent taxpayer and the secondary persons with tax payment obligations, etc.

1.3.3 Delinquent tax collection

It is possible to seize assets of the secondary persons with tax payment obligations if he/she does not pay delinquent tax described in the tax pre-claim within 10 business days from the date of filing of the tax pre-claim.

1.3.4 Early collection and grace period

The provisions of Article 54 (Early collection of risky delinquent tax)and Article 53 (Grace period for paying taxes)shall apply in the same way to secondary persons with tax payment obligations.

1.3.5 Restrictions for monetization

Except for the possibility of a sharp decrease in the value of the asset, the process of collecting delinquent tax cannot be performed from the assets of the secondary person with an obligation to pay taxes, , before the process of monetization of assets of the delinquent taxpayer begins.

In addition, if a secondary person with tax payment obligations has filed a complaint with the Dispute Resolution Board or a court in connection with notifications, tax pre-claim and delinquent tax settlement procedure, the secondary person's asset cannot be monetized until while the time for considering the complaint or making a final decision.

2. Article 57. Secondary persons with tax payment obligations

In the case, where it is determined that the taxpayer's assets is insufficient to recover the delinquent tax and the taxpayer has transferred his/her/its assets to others at no charge or at too low price; or created a beneficial status to others by cancelling their receivables after the day preceding one year prior to the due date for paying taxes.

It can be seen as a quick and easy way to collect taxes, instead of stopping fraud and cheating in the courts, as well as a way to return unjustified profits.

2.1 The conditions under which a secondary obligation can be made

The secondary obligation to pay tax arises as follows:

2.1.1. The taxpayer has transferred his/her/its assets to others at no charge or at too low price; or created a beneficial status to others by cancelling their receivables (does not apply to state owned or public corporation)

2.1.1.1. "Transference his/her/its assets to others at no charge or at too-low price "means"

means donating, donating certain assets as a will, selling and buying, bartering, transferring receivables, investing, transferring rights instead of an asset, etc. and does not apply to assets inherited under a succession agreement.

In this case, cash or assets received as a result of the sale and purchase, exchange, transfer of receivables, shares and participation in equity, received as a result of investments, recovered payables through payment by the asset will be "payout".

2.1.1.2. However, the question of whether the asset was transferred at "too low a price" can be determined by comparing ordinary transactions taking into account the type, quantity and current price of the asset, etc., but the following points should be taken into account:

- When the payment amount is less than the current price for a particular asset (shares, bonds on the market, etc.), current price of which is known, the term is often described as "too low," even if the difference is relatively small.
- For the asset with wide price range (immovable property etc.), it is considered to be "too low price", where payments are less than a half the current price (a half means a certain deviation from one of the two halves), unless there is an exceptional case.

* even if the payment is very low than the current price, it will not meet the conditions of this provision, unless it is considered too low.

2.1.1.3 The question of whether the asset was transferred at "too low a price" is determined by the term of the agreement which, in principle, was the basis for the transfer.

"Cancellation of receivables" means invalidation of receivables pursuant to Article 239 of the Civil Code. In this case, if the receivable is canceled and there is receivables in the payment transaction, it will be considered as "payout".

2.1.1.5 "Creating a beneficial status to others" means creating a beneficial status to others (does not relate to the result of failure to exercise the delinquent taxpayer's exclusive rights)as a result of transfer of asset, cancellation of receivables, including decrease in delinquent taxpayer assets etc. Examples include beneficial status that can be created during transfer of land rights, collateral rights, rental rights, contract for asset handover and allocation as well as distribution of excess dividends to shareholders.

In this case, payments made for the transfer of rights (such as payment for the right, and gratuity money), may be considered equal to a "payout".

The aforementioned transfer of assets to others at no charge or at too low price, cancelling receivables and creation of a beneficial status to others should be carried out after the day preceding one year prior to the due date for paying taxes. "The period after the day one year prior to the due date for paying taxes" includes the day one year prior to the due date for paying taxes. In addition, following issues should be taken into account:

- In the event that the date of the making contract and the date of the transfer of asset (period of acceptance of rights and release from duties)based on this contract are different, it is required to determine whether the date of the transfer shall be taken as of after the day preceding one year prior to the due date for paying taxes.
- During the transfer of an asset, if it is required to register or establish a condition so that third parties cannot claim, it is necessary to determine whether the date of filing the claim is period after the day preceding one year prior to the due date for paying taxes. In this case, if there is temporary registration and, the basic registration based on the temporary registration, then it shall be considered as basic registration.

2.1.3. Taxpayer's assets are insufficient to recover the delinquent tax (hereinafter " insufficient to collect tax"), even measures have been taken to resolve delinquent tax

It is determined as follow:

- "... insufficient to recover the delinquent tax ..." is determined by comparing the amount of delinquent tax that can be collected from delinquent taxpayer's asset and the total amount of delinquent tax of the delinquent taxpayer (including due losses, tax collection cost incurred prior to the decision on the insufficiency, as well as the amount of delinquent tax, that becomes clear before the tax payment deadline).
- 2) In this case, information about the delinquent taxpayer's assets should be found from the registration of the asset or other registration documents, and if necessary, conduct inquiries, inspections and inventory audit.

2.2. Person with tax payment obligations

The person with tax payment obligations is entitled or exempt from the obligation under the free transfer.

In this case, "person entitled or exempted" is a person who has acquired land ownership right, lease right, intangible asset right and other property rights at no charge, or person who is exempt from payables.

2.3. Scope of tax payment obligations

2.3.1 The amount payable by the person with tax payment obligations is limited to the amount of profit earned by transfer at no charge and it will be the total amount of the delinquent tax of the delinquent taxpayer.

2.3.2 The profit received as a result of the transfer at no charge is determined by deducting the amount of "payout" (payment made for the transfer at no charge) and items of income directly related to the profit making, from following "value of assets obtained by transfer at no charge".

- 1) If profit earned by transfer at no charge is monetary asset, then its amount
- 2) If the profit received as a result of the transfer at no charge is other than monetary asset, then value of the asset and, if the receivables have been canceled, the amount of the receivables.

* Profit earned on cancellation of receivables is calculated, taking into account the solvency, maturity date and pledge etc. of the third party with payables.

3) In case of transfer of rights, the price of this right in the actual circumstances of the transfer

* "Items of income directly related to the profit making" means for example, expenses related to the contract, stamp duty for registration etc.

2.3.3 Following issues occurred after the free transfer, such as the profits obtained are no longer available, the costs incurred in respect of the assets received, the collateral rights of the assets, the lease rights, and the existence of the fruits derived from the asset will not be considered.

CHAPTER THIRTEEN. TRANSFER OF THE OPERATIONS ON DELINQUENT TAX COLLECTION

13.1. Cases when the operations on delinquent tax collection can be transferred

In cases, where the assets that are seized and subject to seizure are outside the jurisdiction of the particular tax administration, then head of this tax administration may transfer operations on delinquent tax collection to the head of the tax administration in whose territory the asset is located.

When the tax administration is monetizing the seized assets the operations on tax debt recovery may be transferred to other tax administrations as required.

13.2. The concept and scope of transfer of operations

Regarding delinquent tax, on which a tax pre-invoice has been delivered as a prerequisite for performing delinquent tax collection, "transfer of operations" refers to transfer of the following items in whole or in part, such as the seizure of asset, request for withholding, collecting receivables, organizing an auction, receipt of proceeds from the auction, rights to withhold and allocation rights.

"Transfer of operations" referred to in Article 70.2 of the GTL means the transfer of the right to monetization of seized assets, in whole or in part.

13.3. Notification to the delinquent taxpayer

If the operations were transferred, the tax administration to which operations were transferred should notify the delinquent taxpayer as soon as possible.

CHAPTER FOURTEEN. DISCOUNT OF DUE LOSSES

In case of a discounting the due losses during the grace period in accordance with the GTL, means reduction of the obligation to pay the due losses in part, which is implemented as follows:

14.1. The duration of the discount of the due losses is the duration of the grace period.

14.2. An amount of the discount is 20% of the due losses incurred during the grace period.

14.3. Discounting of the due losses is made upon collection of the due losses after the full collection of the basic tax.

14.4. In case of discounting the due losses, taxpayers are notified through the discounting sheets of the due losses, indicating the basic tax reporting year, type and amount of tax, grace period, etc.

FORMS RELATED TO MANUAL ON DELINQUENT TAX COLLECTION (Draft)

Form 1 Notification sheet #1 for excise tax collection during monetization of assets Form 2 Notification sheet #2 for excise tax collection during monetization of assets Form 3 Claim sheet for exchange of seized asset Form 4 Notification sheet on refusal of claim for exchange of seized asset Form 5 Notification on seizure of insured assets Notification on seizure of assets with collateral right Form 6 Form 7 Statement of obligation to transfer assets Form 8 Notification sheet of obligation to transfer assets Form 9 Act on confiscation of documents Form 10 Act on taking seized assets into tax administration's possession Form 11 Request for permission to use seized assets Form 12 Notification of cancelation of the Act on seizure of assets 1 (Delinquent taxpayer, third party with payables) Form 13 Notification of cancelation of the Act on seizure of assets 2 (for delinquent taxpayer in case if there are related parties and third party with payables) Request for withholding Form 14 Notification of cancelation of withholding request 1 (for the implementing organization) Form 15 Notification of cancelation of withholding request 2 (for delinquent taxpayer) Form 16 Notification of cancelation of withholding request 3 (for authorized person) Form 17 Claim for the cancelation of withholding request Form 18 Notification of refusal of cancellation of the withholding request Auction Form 19 Auction announcement Form 20 Auction notification Form 20-1 Preliminary notification on auction Form 21 Auction notification and requirement to make request for receivables Form 22 Notification of the decision to determine the winner of the auction of the immovable property Form 24 Application to cancel the request for the purchase of the monetized assets Notification of the cancellation of decision on the winner of the Form 25 immovable property auction Form 26 Notification of the cancellation of decision to sell Form 27 Request for current amount of the receivables 1 (private receivables) Form 28 Request for current amount of the receivables 2 (Tax) Form 30 Notification on the transfer of the operations on delinquent tax collection Grace period of paying tax Request for grace period of paying tax Form 32 Form 33 Guarantee on tax payment Form 34-1 Notification on tax payment Form 34-2 Collateral sheet

List of forms

Form 35	Notification on permission of the grace period for the tax payment
Form 40	Request for extension of grace period for tax payment
Form 41	Notification on permission for extension of grace period for tax payment
Form 43	Notification on cancellation of the request for grace period of paying tax
Secondary obl	igation paying taxes
Form 46	Notification on secondary obligation paying tax
Additional	Notification on cancellation of amount of tax subject to secondary
form	obligation paying
Additional	Public notification slip
form	

Form 1 (for implementing organization)

Scope of application

Notification sheet #1 for excise tax collection during monetization of assets date Name of the implementing organization Head of tax administration State secretary, MoF stamp Following excise taxes shall be collected from proceeds of monetization of assets, in accordance with Article 56.4 of the GTL. Address Taxpayer (owner of the Name. asset) surname Name of Asset subject Type and Quantity Tax rate Type of tax Amount of classification to asset taxes monetization and an amount of taxes Name of the Date of implementing seizure organization

1. This notification sheet is used to deliver the notification to the implementing organization, in the case of Article 56.4 of the GTL, and should be issued separately for each act on seizure or process of the implementing organization to which the notification will be delivered.

2. This notification sheet is issued in large quantities (for taxpayer's use) with the "Notification sheet #2 for excise tax collection during monetization of assets".

3. In the section of "Name of asset" of the "Asset subject to monetization and an amount of taxes" name monetizid asset subject to excise tax, location of asset etc. is indicated, as well as in the section "Type and classification" type and classification of the asset subject to tax is indicated.

4. In the section "Name of the implementing organization" to which the notification will be delivered.

5. In the section "Date of seizure", date of seizure is indicated in case if the monetization of assets is carried out in order to collect delinquent tax, in other cases the case number is indicated.

Form 2 (for taxpayers)

Notifica	tion sheet a	#2 for excise tax collection during r	nonetization of assets
			Date
Taxpayer			
Address			
Name and s	ure name		
		Head of tax administration	
		State secretary, MoF	stamp
		of following assets, excise taxes shall be ce with Article 56.4 of the GTL.	collected from proceeds of
"Notification organization		excise tax collection during monetization of a	ssets" (for implementing

Scope of application

• This notification sheet is used to notify the taxpayer when it is consistent with Article 56.4 of the GTL, and is duplicated together with the "Notification sheet #1 for excise tax collection during monetization of assets" "Notification sheet #1 for excise tax collection during monetization of assets" (for implementing organization).

			Claim	sheet fo	or exc	hange	e of seiz	zed ass	set			
To: Head of tax administration Claimant Address Name and surname stamp Subject to claim												
Delinquent taxpayer, or inheritor		addres Name, surnan										
Amount of delinquent tax	vear	<u>`</u>	Type of tax	the due date for paying taxes	Amount of tax	penalty	Interest tax		Due losses, fines	Cost of	delinquent tax collection	Note
					7 Em	Ŧ	In accord with law ¥	dance the	In accordance with the law ₹ "			
Seized asset	Na	ume, qua	antity, o	character	ristics	, locat	" ion and	l etc.	"	" Co	ntent of r	ights
		nte of se							ate			
Шинээр битүүмжлэлийн нэхэмжлэл хийх хөрөнгө	Na	ume, qua	antity, o	character	ristics	, locat	tion and	l etc.			Price	Ŧ
Asset subject to new seizure Scope of application												

- This claim is used by the third party to file for an exchange of seized asset, pursuant to Article 60.3 of the GTL.
- In the section "Delinquent taxpayer, or inheritor" one of the appropriate ones for "delinquent taxpayer", or "inheritor" should be indicated. Also, if the claimant is heir, address of the inheritor before his/her death is indicated.
- In the section "Content of right" of the "Seized asset", in case of seized asset, name and other necessary information of pledge rights, mortgage rights of the third party, which made request for exchange of seized asset. If the heir is claimant, this section is not required to be completed.

Notifica	tion sheet	on refusal of claim for exchange of seized asset	
A	Claimant Address Jame, surname	Date	
		Head of tax administration	
		State secretary, MoF stan	np
Your claim for exe	change of seiz	ed asset cannot be accepted for the following reasons.	
Delinquent	address		
taxpayer, or inheritor	Name, surname		
Reason for			
refusing to exchange seized			
asset			
Note			

- This notification sheet will be used to respond to a refuse a claim to exchange seazed asset.
- In the "Note" section, if necessary, the date of the claim can be specified, as well as the date of withdrawal in connection with which the claim was submitted.
- In the "Delinquent taxpayer, or inheritor" section, any words that do not match the "delinquent taxpayer, or inheritor" can be deleted.

				Notific	cation o	n seizur	e of insur	ed assets		
									D	ate
Addres	s of	f inst	irance	company						
То:		•••••		1	name					
						Head of t	tax administr	ation		
						State sec	cretary, MoF			stamp
								neral Taxatio se the assets a		
Delinqu		addr	ess							
taxpaye		Nam	e							
nquent tax	year		Type of tax	Time to pay	amount	Due losses	Interest	fines	Cost of delinquent tax collection	note
Amount of delinquent tax							In accordance with the law \mathbb{F}	In accordance , with the law		
Seized assets of	 		I 	1 	·····		1	Year Mo		1

Note: The cost indicated in the "Cost of delinquent tax collection" section is the amount incurred until the date of this notification.

- This notification will be used for to notify the insurance company of the seizure.
- In the "Seized assets" section the name, quantity, characteristics and location of the insured assets are stated, and the insurance contents of the assets are not included.
- In the "Date of seizure" section date "year ... month... day" of the act on seizure is indicated.

	No	tifica	tio	n or	1 se	izu	ire	of	asse	ts	w	ith		oll	ate	ra	l r	·iø	ht		
	110				1 50	12.0												-8	,		ate
Address of the	auth	orized	pers	son																	
			r																		
То:	••••	•••••	•••••	na	me																
							F	Iead o	of tax	c ac	lmi	nis	trat	tior	ı						
							S	State s	secre	tar	y, I	Mo	F								stamp
The assets are s	seizeo	d as fo	llow																		
Delinquent	Add	ress																			
taxpayer		ame																			
Amount of delinquent tax	date	Type of tax		Time to	y	amount		fines		interest			Due	losses		ost of	linqu	t tax	collecti	_	note
	da	T _y tay		Τï	pay	an		fir		int			Ď	loŝ		ŭ	de	en	co	uo	ou
							Ŧ		[*		se	aw		se	aw		se	aw	[***		
											accordance	with the law		accordance	with the law		accordance	with the law			
										In	acco	with	In	acco	with	In	acco	with			
											"			"				"	•		
											"			"				"			
<u>a i i i</u>											"			"				"	•		
Seized assets																		_		·······	
				,										_			_				
																.					
Date of seizure																Ves	ar	1	moi	nth	. day
																yu	лı .	1	101		. uay

Note: The cost indicated in the "Cost of delinquent tax collection" section is the amount incurred until the date of this notification.

- This statement will be used to notify third parties with pledged rights that belong to seized assets, of the seizure of assets.
- In case "Preliminary records in the State Register" is made' as provided in Article 185 of the Civil Code, the number of this preliminary record is indicated in the "Seized assets" section.
- In the "Date of seizure" section date "year ... month... day" of the act on seizure is indicated.

Statement of obligation to transfer assets																
							0									Date
Person who Address	holds a	assets	in po	sses	sion	(use	e, earr	n an i	ncon	ne)						
То:			nam	e			Head o State s				ation	1				stamp
	In connection with delinquent tax collection, transfer the following assets that are in your possession which owned by a delinquent taxpayer, to the tax collection inspector as follow.															
delinquent	Ado	dress														
taxpayer	nan	ne											1			
Amount of delinquent tax	year	Type of tax	Vm 10	Time	to pay	Amoun	Fines		interest		Due	losses	Cost of	delinqu ent tax	collecti	Note
						Ŧ	Ŧ		In	accordance with the law	In	accordance with the law	In	accordance with the law		
									"		"		"			
									"		••		••			
Assets obliged to transfer											 					
	Person who h in posse						and	me 1 mam	e							
Time to transp	fer				•	W	here t	to tran	nsfer			•				
Reason for s of obligation					ent											
Note: The cos					tofd	elina	lient f	ax co	llecti	on" (secti	on is th	e am	ount	incu	rred until

Note: The cost indicated in the "Cost of delinquent tax collection" section is the amount incurred until the date of this notification.

- This statement is used to oblige a third party to transfer movable property or securities owned by an delinquent taxpayer and held by a third party for use and income generation, to a tax inspector in accordance with Article 62.5 of the GTL (including confiscation of the documents when seizing receivables in accordance with Article 64.4 of the GTL and transfer of road vehicles and construction equipment to the tax administration in accordance with Article 65.3.4 of the GTL).
- This statement will be prepared along with the "Notification sheet of obligation to transfer assets ".
- In the "Assets to be transferred" section, the name, quantity, characteristics, address and other necessary information about movable property or a security subject to a transfer obligation.

		N	lotif	icati	ion she	et of	obl	igat	ion	to t	ran	sfer	as	sse	ts			
								0										Date
Delinquent t Address To:	axp	pay	rer	nar	me													
						Head of tax administration State secretary, MoF								stamp				
As stated belo person who h														igat	ion	to	the f	following
Delinquent			ddress	5														
taxpayer		Na	ame															
Amount of delinquent tax		усаг	Type of	laA	Time to pay	amount	fines		interest		Due	losses		Cost of	delinque	nt tax	collectio	Note
						[¥-	£.		In	accordance with the law	In	accordance with the law	[**	In	accordance	with the law	Ť.	
									"		"			"				
									••		••			"				
Assets obliged to transfer																		
	w he	Person addr who holds the assets			ress					Na and sur		e						
Time to transfer							Vhere ansfe											
Reason for s sheet of obli	gat	ion		ansfe	r assets	on			11	<u> </u>								1

Note: The cost indicated in the "Cost of delinquent tax collection" section is the amount incurred until the date of this notification.

- This notification sheet is used to notify the third party according to the Article 62.5 of the GTL (including Articles 64.4 and 65.3.4 of the GTL), in case if a statement of obligation to transfer assets to a tax inspector has been delivered to the third party, who holds movable property or securities owned by an delinquent taxpayer for the purpose of using and earning an income.
- This notification sheet will be prepared along with the "Statement of obligation to transfer assets ".

			Act on co	onfiscatio	n of c	locuments	
							Date
				Head of	f tax ad	ministration	
				State se	ecretary	v, MoF	stamp
In relation to	the	collection (of delinquent	t tax, the foll	lowing	documents are confiscated	l:
Delinquent		Address		,	0		
taxpayer		Name					
Confiscated	Na	me of docu	uments			Seized assets	
documents							
Copy of Act	on c	confiscation	n of documar	nts is receive	ed.		
The person w	vho v	was present	t ()	stamp
Copy of Act received.	on c	confiscation	n of documar	its (addresse	ed to the	e person who is subject to	punishment) is
Date ()		stamp	

- This Act is issued to confiscate proofing documents relating to the receivables in accordance with Article 64.4 of the GTL.
- In case of confiscation of documents before the seizure, it is not necessary to fill in "Seized assets" section of the "Confiscated documents" section.
- In parentheses of the "Copy of Act on confiscation of documants is" section the relationship between the person who is subject to punishment and the person who was present is indicated.
- In parentheses of the "Copy of Act on confiscation of documants (addressed to the person who is subject to punishment) is received" the relationship between the person who is subject to punishment and the person who received copy of the act, is indicated.

Act on	l tal	king seiz	ed a	ssets into ta	ax adm	inistration's po	ossession
							Date
				Hand of	tor ofm	inistration	
				State se	cretary, N	Aof	stamp
The assets has be	en ta	aken in to ta	ax adı	ninistration's p	ossessior	as follow.	
Delinquent taxpa	yer	Address					
		Name					
Assets taken							
into tax							
administration's	Da	te of seizur	e			date	
possession							
Act on taking seiz	zed a	assets into t	ax ad	ministration's p	ossessio	n is received.	
The person who	was j	present ()	stamp
Copy of Act on ta	aking	g seized ass	sets in	to tax administ	tration's	possession (addresse	ed to the person who
is subject to punis	shme	ent) is recei	ved.				*
5 1		,					
Date ()		stamp	
, , , , , , , , , , , , , , , , , , ,				,		1	

Hereby oblige you to store and protect the assets specified in the Act on taking seized a	ssets into
tax administration's possession.	
	Date
Hand offen administration	
Head of tax administration	
State secretary, MoF	seal

- This act is issued in accordance with Article 65.3.3 of the GTL, if the seized assets and construction equipment were taken in to the tax administration's possession and as well as the record of the inventory audit was not made.
- The "Assets taken into tax administration's possession" section is filled in in line with content of the Act on seizure.
- In parentheses of the "Act on taking seized assets into tax administration's possession is received" section the relationship between the person who store the assets and the person who was present is indicated.
- In parentheses of the "Copy of Act on taking seized assets in to tax administration's possession (addressed to the person who is subject to punishment) is received" section the relationship between the person who store the assets and the person who received a copy of the act is indicated.
- In case of storage of assets and construction equipment that has been taken in to tax administration's possession at the third party, change the bottom of the box to "Store the above assets for free until you receive the notification" or record it outside the table and person in charge of storage shall sign (surname) and put a seal.

	Request fo	r permission to use seized assets
		Date
То:	Head of tax	administration
		Applicant
		() address, name, stamp
		() address, name, stamp
		() address, name, stamp
Allow the use (n	novet, transport) of	the seized assets listed below.
Delinquent	Address	
taxpayer	Name	
Seized assets		
	Date of seizure	year month day
Reasons to use		
Statement of pe	rm <u>it</u>	Date
^		
	Head	d of tax administration stamp
••••••		

- This request is made by the delinquent taxpayer when requesting permission to fly the seized aircraft in accordance with Article 65.2.5 of the GTL and the use of the assets and construction equipment seized in accordance with Article 65.3.6 of the GTL.
- Also, this form is used to notify the applicant that they have been approved for the use of assets, therefore this form is issued in number of copies.
- In parentheses before "Applicant address", Applicant's rights (pledged rights, person with authority to apply for the withholding request) connected with seized assets shall be indicated.
- In the "Reasons to use" section, the reason for the need for use and the conditions of use is indicated as precisely as possible.
- In the "Statement of permit", in case if the request is accepted, then it will be written "The said request is authorized to be used for good", and if the acceptance conditions are specified, that condition shall be specified.

Form 12 (Delinquent taxpayer, third party with payables)

r				
Notification of cancelation of the Act on seizure of assets 1				
			Date	
Delinquent taxpay Address	ver, third party	with payables		
То:	nai	me		
		Head of tax administration		
		State secretary, MoF	stamp	
Hereby notify that	t the seizure of	the following assets has been canceled.		
Delinquent	Address			
taxpayer	Name			
Assets, the act	Name, quant	ity, characteristics, address, location, other	Date of seizure	
on which was			Date	
canceled				
Note				
Scope of applicati	on			

• This notification will be used to notify the delinquent taxpayer and the third party with payables about cancelation of asset seizure act as stated in Article 60.8 of the GTL.

- With regard to assets, the act on which was canceled, copy of this notification shall be issued along with "Notification of cancelation of the Act on seizure of assets 2" (for delinquent taxpayer in case if there are related parties and third party with payables) if there are person with pledged rights, or person who made withholding request, or third party with payables.
- In the "Date of seizure" of the "Assets, the act on which was canceled", date of seizure is indicated, if date of seizure of different depending on assets, date is indicated separately.

In the "Note" section, following issues are indicated:

- Notice on transfer of assets, if assets act of which is to be canceled are movable property and security and these assets are in the possession of tax inspector or stored at the third party.
- If it is required to remove seal and other means of seizure by delinquent taxpayer itself, make notice on it.
- If there are documents confiscated in accordance with Article 64.4 of the GTL, notice on transfer of these documents.
- If it is required, reasons to cancel act on seizure.
- If the assets were transferred to the organization that jointly carried out the seizure, notify the transfer.
- Other issues to be specified.

Form 13 (for delinquent taxpayer in case if there are related parties and third party with payables)

Notification of cancelation of the Act on seizure of assets 2				
Address	ver, third party with payables	Date		
Handhar natifie that	Head of tax administration State secretary, MoF	stamp		
Delinquent	t the seizure of the following assets has been canceled. Address			
taxpayer	Name			
Assets, the act	Name, quantity, characteristics, address, location, other	Date of seizure		
on which was		Date		
canceled				
Note				

- This notification will be used to notify the delinquent taxpayer and the third party with payables about cancelation of asset seizure act as stated in Article 60.8 of the GTL.
- Copy of this notification shall be issued along with "Notification of cancelation of the Act on seizure of assets 1".

Form 14 (for the implementing organization)

Notification of cancelation of withholding request 1			
Name of th	e impleme	nting organization	Date
То:	name		
		Head of tax administration State secretary, MoF	stamp
		olding request has been canceled.	
Delinquent	Address		
taxpayer	name		
ne of the asset ess associated cancellation of nolding request	Nam	e, quantity, characteristics, address, location, other	Date of withholding request
e a ocia atic rec			
f th ssc ssc sell sell ing			
e o ss a anc			
am ces bho			
The name of the asset or process associated with the cancellation of the withholding request	Name of implement organizat	iting	

- This notification will be used to notify the implementing authority if the with request is cancelled.
- This notification shall be issued along with notification for delinquent taxpayer.
- This notification shall be issued for each process, if monetization is separate process from the delinquent tax collection process.

Form 15 (for delinquent taxpayer)

Notification of cancelation of withholding request 2				
Name of th	e impleme	nting organization	Date	
То:	name			
		Head of tax administration State secretary, MoF	stamp	
Hereby notify	y that withl	olding request has been canceled.		
Delinquent	Address			
taxpayer	name			
e asset ciated ation of request	Nam	e, quantity, characteristics, address, location, other	Date of withholding request	
e name of the asset process associated the cancellation c withholding reques				
f th asse cell ing				
ie o ss a can old				
anr ace ace		1		
The name of the asset or process associated with the cancellation of the withholding request	Name of implement	ting		

- This notification will be used to notify the delinquent taxpayer if the with request is cancelled.
- This notification shall be issued along with notification for implementing organization.
- This notification shall be issued for each process, if monitization is separate process from the delinquent tax collection process.

Form 16 (for authorized person)

Notification of cancelation of withholding request 3			
Name of th	e authorize	d person	Date
То:	name		
		Head of tax administration State secretary, MoF	stamp
Hereby notify	y that with	olding request has been canceled.	
Delinquent	Address		
taxpayer	name		
The name of the asset or process associated with the cancellation of the withholding request	Nam	e, quantity, characteristics, address, location, other	Date of withholding request
	Name of implement	ting	

- This notification will be used to notify the person with pledged rights if the with request is cancelled.
- In the "The name of the asset or process associated with the cancellation of the withholding request" section notice for each number of process should not be written even monitization was separate process from the delinquent tax collection process.

Clain	n for the cancelati	on	of withho	olding reques	t	
						Date
Hea	ad of tax administration					
				stamp		
thholdin	ng is made as follow.					
Addres	S					
Name						
g			Date of with	holding request	date	
t	Hea hholdin Addres Name	Head of tax administration hholding is made as follow. Address Name	Head of tax administration A Name	Head of tax administration Address Name Name Date of with	Head of tax administration Address Name stamp hholding is made as follow. Address Name Date of withholding request	Address Name stamp hholding is made as follow. Address Name Name Date of withholding request date

Scope of application

• This form will be used by person who has right to withhold from proceeds of monetization, to make claim for cancelation of withholding request.

Noti	ification	of refusal of	cancellation of the withholding requ	uest
The claimant				
Address				
To:		name		
			Head of tax administration State secretary, MoF	stamp
Hereby notify reasons:	y that your	claim to cancel v	withholding request has not been approved for t	he following
Delinquent	Address			
taxpayer	Name			
Reason for				
cliaming to				
cancel withholding				
request				
1				
Note				
1.000				

- This notification will be used to notify the claimant claiming the cancellation of the withholding request that there are no grounds for cancellation.
- In the "Note" section, date of claim for cancellation of the withholding request, date of withholding request associated with this claim will be indicated, if required.

Scope of application

- This announcement will be used to inform the public about the auction in accordance with Section 8.1 of the regulation "Organization of the auction and monetization under direct contract".
- Announcement will be made for each class of movable property, securities and other assets.
- In the "Name, charateristics, address, location, rights, other" section, name and address of the delinquent taxpayer is indicated.
- Of auction deposit is not required, words "not required" is written in the corresponding section.
- When indicating the "initial price", consider the following:
 - If the initial price is not announced, it will be stated in the relevant section.
 - When selling movable property at auction, the initial price is necessarily included in the table, even if the initial price is fixed on the asset.
 - The decision on the initial price is made after determining the date of the auction, and if the initial price is subsequently announced, this must be explained. In this case, the initial price will be announced inline with the form and displayed at the right part of the auction announcement.
- If the section "Assets to sale, auction deposit, initial price" is compiled separately due to the large number of assets for the auction, then the word "attached" is written in this section.

Even it was not indicated in the auction announcement, certain issues within the law will be written in the "Other" section to ensure proper operation.

		Auction announcem	ent		
					Date
Head of tax adm	inistration			stamp	
Auctions for seiz	zed assets are or	ganized as described below.			
Assets to sale, auction deposit, initial price	sale category	Assets to sale Name, charateristics, address, location, rights, other	quantity	auction deposit	initial price (minimum price for the sale)
	2. % markthe asset to be		•••		been fixed to
The method of s	ale	Tender Auction Online auction			
Date of sale	tender	Starts at: hours year	r month	day	
Place of event					
Decision to sale	day, ho hour day	urs year month	where		
Time to pay the payment Requirenmnets to the winner,	hours	year month day			
other conditions					
Other	will be 2. The w	ere is no bidder offering a pric carried out again. inner will bear the cost (regi- ansfer of rights during the auct	stration fe	*	
	Is	sue concerning rights of the wi	ithholder		

A person with pledged rights, mortgage rights and rights to receive first, entitled to withhold from assets sold at auction, please send a request to the tax administration indicating the amount due, up to the day before the decision to sell.

The application form is available in the tax department.

	Ini	itial pr	ice sheet		
					Date
			Head of tax a	administration	stamp
sale	Name of				
category	asset				
initial price (minimum price for the sale)		Ŧ	Auction deposit		Ŧ

Scope of application

• This initial price sheet is used when the initial price is fixed on an auction asset which substitutes announcement of the initial price for the public.

				Auc	tion n	otificati	on					
Delinquent tax Address	kpaye	r									Date	
To:			name									
				He	ead of tax	x administr	ation					
					State se	cretary, M	οF			sta	mp	
Hereby notify	that s	seized as	sets listed	below	will be s	sold throug	h an auctic	on.				
	Deli	inquent										
ü		ayer	address				name					
ld			teristics, a	address,	, location	n, rights,	quanti	ty	Auction		Initial	
e so auc	othe	er							deposit	T	price	F
o b€ Lan										Ŧ		Ł
es to ugh												
asstes to be sold through an auction.												
Date of sale	tend	er	Starts a	t: ho	urs	year n	nonth d	ay				
Place of the au	uction	l										
Decision to sa	le		day, hour	hou	rs	year me	onth da	у	where			
Time to pay th	ne pay	vment	hours	5	year	month c	lay					
Requirenmnet												
winner, other	condi	tions										
Other												
Taxes												
associated		f	0	nt		t		f	ion			
with the	ц.	oe c es	ne t	ioui ax	Se	sres	eses	st o:	x lect		o	
with the auction	year	Type of taxes	Time to pay	Amount of tax	fines	interest	Due losses	Cost of	t tax collection		note	
				Ŧ	Ŧ				·		· ·	
				1	1	ance w	ance w	ance				
						orda e lav	orda e lav	brda	3			
						the	the	acce				
						In accordance with the law F	In accordance with the law F	In accordance	[**			
						I N I	∎ ∎	I	> _m			
						"	"					
						"	"					

Note: The cost indicated in the "Cost of delinquent tax collection" section is the amount incurred until the date of this notification.

- This notification is used to notify the delinquent taxpayer of the auction in accordance with Section 5.4 of the regulation "Organization of the auction and monetization under direct contract".
- In the "Taxes associated with the auction" section, about taxes levied, as well as other tax debts are indicated, if required.

Form 20-1

Address		Prelin
name	To:	

reliminary notification on auction

Date

Head of tax administration

State secretary of MOF stamp

It is recommended ummediately pay the delinquent tax, because the following seized assets are expected to be auctioned off soon due to a non-payment of your taxes. If you have difficulty paying taxes, notify the Tax collection unit before ... hour ... day ... monthyear

- This notification is prepared and used prior to the auction.
- The "Seized assets" section shall be copied from the act on seizure. If there are many types of seized assets, key assets can be indicated.

interview interview	Seized assets	Amount of delinquent tax	tax
Type of taxes Type of taxes Time to pay Time to pay </td <td></td> <td>year</td> <td></td>		year	
Time to pay Time to pay <t< td=""><td></td><td>Type of ta</td><td>axes</td></t<>		Type of ta	axes
Amount of tax Amount of tax Image: state		Time to p	ay
fines fi		Amount o	of tax
interest Due losses Cost of delinquent tax collection note		fines	
Due losses Cost of delinquent tax collection		interest	
Cost of delinquent tax collection note		Due losse	S
note		Cost of delinquen collection	nt tax
		note	

Auction notification and requirement to make request for receivables

Related person

Address

To:

name

Head of tax administration State secretary of MOF

stamp

The seized assets listed below will be sold through an auction.

A person with pledged rights, mortgage rights and rights to receive first, entitled to withhold from assets sold at auction, please send a "Request for current receivables" to the tax administration, up to the day before the day to sell.

(same as with notification on auction)

- This notification is used in case of notification to persons registered with the registration authorities (article 60.3 of the Law on the enforcement of court decisions), whose right may be affected by legal issues related to the organization of the auction.
- In the case of delivery to the person requesting withholding, they will be briefly described in the "Auction Asset" section and no entry will be made of the auction deposit and the initial price.
- When submitting this requirement, a "Request for current receivables" must be attached.
- In the case of sale of seized assets based on direct contract in accordance with section 13.1 of the regulation "Organization of the auction and monetization under direct contract", this requirement shall be modified in accordance with the content.

Notifi	cati	on of the		letermi ovable p		vinner of the av	uction of the
				•		·	Date
Delinw Address		axpayer, rela	ated party				
To:			name				
						x administration etary of MOF	stamp
Hereby no	otify t	hat the winn	er of the auction	is identifi	ed as follo	W.	
Delinwue taxpaye		Address					
		Name					
Asset for a		on		T		Amount of	
Name, oth	ler				quantity	maximum price	Name of the winner
Data of th	a dar	ision idontif	ring the wing			n month 1	
Date of th Decision	e dec	, hour	ving the winner		yea	ard where	ay
to sell			.monthday			where	

- This notification is used to provide information on the winner of an immovable property auction in accordance with Sections 9.4 and 9.7 of the regulation "Organization of the auction and monetization under direct contract" to the delinquent taxpayer and related party.
- On the outside of this notification, it must indicate that "The winner has the right to transfer the above assets if payment is made in full after the decision to sell" (date of payment is indicated).

	Applic	cation to cancel the request for t of the monetized assets	he purchase	
				Date
To:	he	ead of tax administration		
			The applicar	nt
			Address	
			Name stam	р
The request	for the pur	chase of the monetized assets is cancell	led as follow.	
Delinquent	Address			
taxpayer	Name			
	Name, other	r		Quantity
which the				
request is				
cancelled				
Reasons				
to cancel				
the				
request				
-1				

Scope of application

• This application is used if an auction winner cancels an asset purchase request.

Notificatio	on of the		cision on the winner of th y auction	ie imn	novable
		F - F - F		Date	
The winner, Address	, delinquent	t taxpayer, related party			
To:		name	Head of tax administration State secretary of MOF	star	np
		nner of the auction is c	cancelled as follow.		
The winner	Address Name				
delinquent	Address				
taxpayer	Name				
Asset of which the decision on the winner is cancelled	Name, ot	her			Quantity
Reason to	In accord	ance with Article of t	he GTL		
cancel the decision on the winner					
Note					

	Notifica	tion of the ca	ncellation of decision to sell	
			I	Date
The winner,	delinquent tax	payer, related party	I	
Address				
To:		name		
			Head of tax administration	
			State secretary of MOF	stamp
		n is cancelled as	follow.	
The winner	Address			
	Name			
delinquent	Address			
taxpayer	Name			I
Asset of	Name, other			Quantity
which the				
decision on				
the winner				
is cancelled				
Decembra	T., 1	e with Article o		
Reason to cancel the	In accordance	e with Article o		
decision to				
sell				
Sen				
Note				

Scope of application of "Notification of the cancellation of decision on the winner of the immovable property auction" and "Notification of the cancellation of decision to sell"

- This notification is used to cancel the decision to determine the winner and the decision to sell in connection with a violation of the auction process specified in Article 68.4 of the GTL and Sections 10.2 and 10.5 of the regulation "Organization of the auction and monetization under direct contract", and to notify the winner, delinquent taxpayer and related parties about it.
- Notifications are sent to auction participants (winners or buyers), delinquent taxpayer, related parties, third partywith payables, requesters for withholding and other required persons.
- In the "Reason to cancel the decision on the winner" section and "Reason to cancel the decision to sell" section relevant provisions are indicated and if there are no relevant provisions words such as "illegal", or "incompatible" are written.
- In the "note" section following issues such as auction deposit and its refund etc. are included.

Form 27 (private receivables)

		Request for current amount of the receivables 1	les 1
To:	head of tax administration		Date
I have the follow	I have the following rights in respect of the auctioned assets:	Address, name, sound success, name, sound assets:	
Delinquent taxpayer	ayer address		Name
Auction assets			
rights in respect of the	Rights	(mortgage right) amount of receivables?	(mortgage right) amount of receivables?
auction assets		amount of receivables at the time of seizing $\dots \mathbb{R}$	amount of receivables at the time of seizing $\dots \mathbb{R}$
	Person Address		
	with Name payables		
	Time to pay		
	other		
Current	principle receivables		Ŧ
number of	interest	oles) (interest) (tin	bles) (interest) (tin
I CCCI VAUICS			uayst X X uale –
			F
			Ŧ
Attached docum	ents (content of receivables	Attached documents (content of receivables, proofing documents on the amount)	
Note: About ir	Note: About interest, time to pay is determined until the	rmined until the time indicated in the "Auction notifica	time indicated in the "Auction notification", or "Auction notification and requirement to make

mhai ш, Ξ Í to pay is uctor request for receivables". Scope of application unu des

- This request is used by the person with receivables specified in section of the the regulation "Organization of the auction and monetization under direct contract" to request for withholding of the current amount of a receivables from auctions proceeds in accordance with Sections 69.2.1 and 69.2.2 of the the regulation "Organization of the auction and monetization under direct contract". •
 - This request is made for each asset. •

Form 28 (Tax)

	Date			Due date	for	collection					
				Total	amount			¥			
				Cost of	delinquent	tax collection		[**			
					Payment	limits		[*]			
bles 2		Name		Due losses	Fines	Date from which	estimation is made	Ŧ			
the receival	đ				Amount			[***		<u> </u>	
Request for current amount of the receivables 2	The applicant Address, name, stamp			Interest	Fines	Date from which	estimation is made	[*•			
t for curren	The Address,			Inte	Amount			[***			
Reques	uc	assets:		fines				[** -			
	head of tax administration	I have the following rights in respect of the auctioned assets: Delinquent taxpayer		Underlying	tax			[***			
	read of tax	respect of		Due	date						
	1	<u>rights in</u> r			of tax						
		following taxpayer		year							
	To:	I have the following Delinquent taxpayer	Auction asset	Current	amount of	taxes					

Note: About interest and due losses, time to pay is determined until the time indicated in the "Auction notification and requirement to make request for receivables".

Scope of application

• This request is used to withhold a tax related to the withholding request from the from auctions proceeds in accordance with Sections 69.1.1 of the the regulation "Organization of the auction and monetization under direct contract".

			Form 30	
Date of re	quest	year monthday		
	Not	ification on the tran	sfer of the operations	
		on delinquent	tax collection	
		-		Date
			Head of tax administration	
			State secretary of MOF	stamp
		delinquent tax will be readed delinquent tax collection	covered from your assets in conne to our tax administration.	ction with the
	Name of tax	administration which tran	sferred the operations on	
	delinquent ta	ax collection		
			4	
			tax administration	

- This notification is used notify the taxpayer in accordance with Article 70.3 of the GTL by the head of the tax administration, in case of the transfer of the operations on delinquent tax collection in accordance with Article 70.1 of the GTL.
- When the extra activity is transferred it may not be notified.

The	Address	Work]
applicant	name	Phone	

Request for grace period of paying tax

								Payme schedu	
								date	Amount
Amount of tax		to th	e reque	st for					
Classification of	of		02	02	02	02	02		
permission									
Type of tax									
Time of impos	ition		04	04	04	04	04		
			05	05	05	05	05		
Time of collect	tion		06	06	06	06	06		
Classification of collection	of		07	07	07	07	07		
Payment freque	ency		08	08	08	08	08		
Classification	Principle	e	Ŧ	Ŧ	₹		₹ ₹		
of amount of	Fines								
tax	Due								
	losses								
	Interest								
	cost								
Time related to	grace per	riod	•		From. yea	armonthd	lay until .yea	rmont	thday
Reason for enjoying grace period						collateral			, e

- This request is used in the case of a taxpayer requesting a grace period in accordance with Article 53.1 of the GTL.
- If the applicant is a legal entity, then the name and address of the legal entity's management will be included in the "The applicant" section.
- In the section "Reasons for enjoying grace period", reflect the reality set out in Article 53.1 of the GTL and the inability to settle the tax on one-off payments.
- When the value of the tax requested to apply for a grace period exceeds ₹ 10,000,000, please specify in the "Collateral" section the type of collateral, quantity, amount of value, location, and other relevant information, or if collateral is not available, reasons are specified in detail.
- If necessary, attach collateral documents
- If this request is received, it will be approved by the responsible unit.



Form	33

				Guara	antee on t	ax paym	ent		
To:		hea	ad of ta	x administra	tion				Date
				stamp					
Here	eby I gra	nt you of	tax pa	yment by the	Name taxpayer du		-		
	payer	addre					Name		
Amount of taxes related to grace period	year	Type of taxes	Time to pay	Amount of tax	fines	interest	Due losses	Cost of delinquent tax collection	note
late									
es re									
taxé									
t of									
uno									
Am		Total ar	nount						

- This guarantee is made by the guarantor and handed over to the head of tax administration by the taxpayer, if the collateral of the payment of tax is owned by the guarantor.
 - This form is filled in as follow:
 - In the case of more than 2 guarantors, the names are listed and their joint guarantee is indicated. If the guarantor is a legal entity, enter the name of the management or representative person of the legal entity.
 - Regarding signature and stamp of the guarantor, confirmation of signature and stamp is attached. If the guarantor is a legal entity, then a copy of the registration certificate of the legal entity must be additionally attached.

the guarantor	Address	
	Name	

You have the right to file a complaint with this statement within 3 months from the date of receipt of the notice to the tax authority.

Notification on tax payment

Date

Head of tax administration

State secretary of MOF

stamp

Please pay the delinquent tax of the taxpayer and tax collection costs below in a timely manner as the guarantor.

Taxpayer	1	nationality						nan	ne				
Delinquent tax		Type of taxes	Time to pay Amount of tax		tax	fines			interest	Due losses	Cost of delinquent tax collection	note	
The amount tax and tax of			issued by	y the	guaranto	or fo	or the ar	nou	nt of de	elinquent		I	¥
Due timeyearm			10nthda	onthday Where to pay Bank acco						ation			
Note													

					Coll	aterals	sheet		
									Date
To:			head	l of tax a	ıdminist	ration		Nai	Address of the guarantor me of the taxpayer stamp
The	following	g assets	are prov	vided as	collatera	al for the	grace period	l for the	e tax payment:
	ount of tax						<u> </u>		Collateral assets
year	Type of taxes	Time to pay	Amount of tax	fines	interest	Due losses	Cost of delinquent tax collection	note	
									-
The	above ass	sets we	re recogi	nized as	collatera	al for the		f the ow	vner of the collateral assets
		h darr					Nam	ne	stamp
Atta	ear. montl ched iments	naay							

- This sheet is used by the guarantor in case of a collateral related to the grace period for the tax payment.
 - The sheet is filled in as follows:
 - The sheet is attached for each type of collateral.
 - In case of differences between the guarantor and owner of the collateral, the owner's name, signature and stamp are included and confirmation of signature and stamp is attached. The guarantor may not sign the sheet, if the guarantor guarantees payment of tax.
 - In the "Note" section of the "Amount of tax related to the grace period" section, reporting period related to the grace period and amount for the year and month are indicated.

The applicant	address	
e ap	ne	To:
Th	nan	Number

Complaints related to this permission may be made to the Head of Tax Administration within 30 days of the day following the day of receipt of the permit

Notification on permission of the grace period for the tax payment

Hereby notify that your request dated as of ... year ... month ... day for a grace period for state and local tax has been approved.

Request of ... year ... month ... day

... year ... month ... day

Head of tax administration

State secretary of MoF stamp

Amount of tax related to the grace period Payment schedule ype of taxes date Amount Time to pay ax collectior Amount of Due losses delinquent interest Cost of year fines note tax Ŧ Amount Ŧ Ŧ Amount according according to to the the Law Law Ŧ Grace period From year.... month...day to ... year...month.... day Law provision Article 53.1 of the GTL Collateral

- This notification is used to notify taxpayers in accordance with Article 53.1 of the GTL, if the grace period is approved.
- If the permission is made under the "Request for grace period", the entries regarding the above complaints and disputes will be deleted.

Request for extension of grace period for tax payment

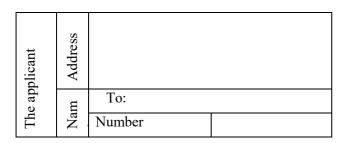
Date of reques	t	yearmonthday	Phone	
The	Address			
applicant	name			stamp

To: head of tax administration

Pleace extend the grace period for the payment of taxes in accordance with article 53.2 of the GTL in the following manner.

		A	mount	oftaxe	s related to	the grac	e period		Payme: schedu	
year	Type of taxes	Time to pay	Amount of tax	fines	interest	Due losses	Cost of delinquent tax collection	note	date	Amount
			Ŧ	Ŧ	Amount according to the Law	Ŧ	Amount according to the Law T			Ŧ
Grace	period		Fre	om y	ear mon	thday t	oyearmo	nth day		
Reason for gra	ice									
period										
Collat	eral									

- This notification is used in case of requesting extension of the grace period in accordance with Article 53.1 of the GTL.
- If the applicant has a company, the name and address of the director will be included in the "Applicant" section.
- In the "Amount of taxes related to the grace period" section, tax year, type of tax, due date and amount of tax related to grace period is indicated.
- In the "Reasons for grace period" section reason for an inability of paying taxes by due date is clearly stated.
- In the "Collateral" section, in case of a new collateral, the type, amount, price and place of the collateral, other issues of security, or specific situations where the collateral cannot be made, are indicated.
- The request, if necessary, will be accompanied by collateral documents.



Complaints related to this permission may be made to the Head of Tax Administration within 30 days of the day following the day of receipt of the permit

Notification on permission for extension of grace period for tax payment

Hereby notify that your request dated as of ... year ... month ... day for an extension of the grace period for state and local tax has been approved.

Request of ... year ... month ... day

... year ... month ... day

Head of tax administration

State secretary of MOF

stamp

	Amount of taxes related to the grace period										
year	Type of taxes	Time to pay	Amount of tax	fines	interest	Due losses	Cost of delinquent tax collection	note	schedu date	Amount	
			Ŧ	Ŧ	Amount according to the Law	Ŧ	Amount according to the Law				
Grace	period	Fro	m yea	ir moi	nthday to	year.	month da	у			
Reason extens	Reasons for extension										
Collate	eral										

- This notification is used to notify taxpayers that the grace period has been extended.
- If the permission is issued under the "Request for grace period of paying tax", the entries in the above complaints and disputes will be deleted.

Маягт 43

/er	Address	
Faxpaye	Nam	To:
Ē	Z	Number

Complaints related to this notification may be made to the Head of Tax Administration within 30 days of the day following the day of receipt of the permit

Notification on cancellation of the request for grace period of paying tax

According to the Article 53.1 of the GTL, hereby notify that permission dated as of ... year ... month ... day for the permission of grace period for state and local tax has been cancelled.

.....year....day

Head of tax administration stamp

Amount	Reasons to cancel								
year	Type of taxes	Time to pay	Amount of tax	fines	interest	Due losses	Cost of delinquent tax collection	note	
			Ŧ	Ŧ	Amount according to the Law F	Ŧ	Amount according to the Law F		

Scope of application:

• This notification is used to notify taxpayers in accordance with Article 53.6 of the GTL, if the grace period is cancelled.

	1	
line applicant	Address	
e ap	m	To:
Th	Nam	Number

Notification on secondary obligation paying tax

Complaints related to this notification may be made to the Head of Tax Administration within 30 days of the day following the day of receipt of the permit

Hereby notify you to pay taxes by the due date, as you have a secondary obligation to pay taxes in accordance with the provisions of the law below and to pay the following amounts related to taxpayer's delinquent tax and tax collection costs:

Delinquent a taxpayer		add								Na	ime				
delinquent tax	year		Type of taxes	Time to pay		Amount of tax		fines			interest		Due losses	Cost of delinque nt tax	note
						Ŧ				Ŧ	Amount accordin to the Law ¥		Ŧ	Amount according to the Law ¥	
					son with se		y o	bliga	tion				I	I	Ŧ
Due date		-	5					/here pay	Ba	ank	k account information				
Law provisions related to secondary obligation			pa	ying	taxes	I	Article 57.1 of the GTL								
Note															

- This notification is used to notify a person with secondary obligation paying tax in the case of imposition of a secondary obligation to pay taxes in accordance with Section 58.1 of the GTL.
- If necessary, it is possible to add additional specifications as well as change the taxpayer's entry.
- In the "Delinquent tax" section of the notification, total amount of the delinquent tax is indicated.
- In the section "Amount to be paid by the person with secondary obligation paying delinquent tax and tax collection cost", sum of above amounts limited by₮ (amount of received profit) is indicated.
- In the "Notes" section, indicate the assets and profits that caused the secondary obligation to pay taxes.
- In the "Due date" section, write 20 days following the date of filing the notification of paying taxes. If the following day after 20 days is a weekend, write a date different from the day off.

Additional form

Demand slip to pay tax

(for the person with secondary obligation paying tax)

Hereby demand immediate payment, since the previously declared tax is still not paid.

Address Name			
 Attention Assets will be seized if the delinquent tax is not paid until the 11th day, including the date of delivery of this demand slip. 	Number	Address Name	
• Complaints regarding this demand slip may be filed with the Head of the Tax Administration within 30 days of the receipt date of the request.	will pay a secondar paying ta	unt of tax you as you have a y obligation x with respect taxpayer	to Ŧ

.....year month ... day

Head of tax administration

State secretary of MOF

stamp

Additional form

Notification on cancellation of amount of tax subject to secondary obligation paying

Address

Date

To:

name

Head of tax administration

State secretary MoF stamp

This is to notify you that the following amount of tax, which are subject to your secondary obligation, have been canceled.

Person with secondary obligation	Address		Name				
Secondary obligation	taxpayer Provision of related law	address	Name				
canceled	Date of delivery of notification to pay tax	year monthday					
	Amount of canceled tax			Ŧ			
Reasons of cancellation							
Note							

- This notification is used in following cases:
 - Notify the person with secondary obligation, if the taxpayer's delinquent tax has decreased, regardless of the person with secondary obligation.
 - Notify the head of the relevant tax administration in case of reduction of total amount of delinquent tax related to the secondary obligation of paying taxes (except where the relevant tax administration is its own tax administration).
- In the "Amount of canceled tax" section of the "Secondary Obligation canceled" section, words "Total Amount" is written if if the total amount is cancelled.
- In the "reasons for cancellation" section, specifies the reason for the cancellation (for example, "paid") and related date are indicated.
- In the "Notes" section, if part of the amount related to the secondary obligation is canceled, the remaining amount is included.
- Modifications can be made as needed if the secondary obliged person is notified to the head of the respective tax administration.

...year. month...day

Assets seized for the collection of delinquent tax.

.....tax administration stamp

Hereby inform you that liability is imposed in accordance with the law in case of arbitrary removal of the seal, as well as in case of damage or concealment of the seized property. Form 9. Public notification

Notification slip

Address of the delinquent taxpayer

Name

Description of asset status

Hereby notify the public that the aforementioned assets are seized as of the ... year. month. day.

Head of tax administration

State secretary MoF stamp

Any person who has neglected or invalidated this notification shall be liable in accordance with the provisions of the Criminal Code.

Scope of application:

• If the seized property is movable property and it is unsuitable for sealing, this notice slip shall be fixed at the facility or facility door where the equipment is located. This slip is indicated in the "Seized assets" section of the seizing slip to prevent possible complaints and suggestions.