

モンゴル国  
国税庁

# モンゴル国国税庁徴税機能強化及 国際課税取組支援プロジェクト

## 第二年次業務完了報告書

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PDM

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専門家派遣実績

研修実績

JCC MM 等

資機材リスト

研修教材(専門家作成分)

## 別冊

OECD Model Tax Convention on Income and on Capital モンゴル語版

国際課税用語集

事例集

## 略語表

略語	英語	日本語
AOA	Authorized OECD Approach	OECD承認アプローチ
APA	Advanced Pricing Arrangement	移転価格税制に関する事前確認
BEPS	Base Erosion & Profit Shifting	税源浸食と利益移転
CFC	Controlled Foreign Company	被支配外国法人
C/P	Counterpart	カウンターパート
CP	Cost plus method	原価基準
CUP	Comparable Uncontrolled Price Method	独立価格比準
EOI	Exchange of Information	情報交換
GACT	General Authority of Customs and Taxation	税関国税庁
GDT	General Department of Taxation	国税庁
GOM	The Government of Mongolia	モンゴル国政府
GOJ	The Government of Japan	日本国政府
IMF	International Monetary Fund	国際通貨基金
JCC	Joint Coordinating Committee	合同調整委員会
JICA	Japan International Cooperation Agency	国際協力機構
MAP	Mutual Agreement Procedure	相互協議
MNT	Mongolian Tugrik	トゥグルグ（通貨単位）
MTA	Mongolia Tax Administration	モンゴル国国税庁
NTA	National Tax Agency of Japan	日本国国税庁
OECD	Organization for Economic Cooperation and Development	経済協力開発機構
OJT	On-the-Job Training	オンザジョブトレーニング
PDCA	Plan-Do-Check-Action	計画-実施-チェック-アクション（PDCA）
PE	Permanent Establishment	恒久的施設
PDM	Project Design Matrix	プロジェクト・デザイン・マトリクス
PO	Plan of Operation	暫定実施計画
PS	Profit Split Method	利益分割法
R/D	Record of Discussion	協議議事録
RP	Resale Price Method	再販売価格基準
TNMM	Transactional Net Margin Method	取引単位営業利益法
TP	Transfer Pricing	移転価格
TPM	Transfer Pricing Method	移転価格算定方法
TRIPS	Total Revenue Information Processing System	納税者管理情報修正システム
WB	The World Bank	世界銀行

# 1. プロジェクトの概要

## 1.1 プロジェクトの背景と経緯

モンゴル国政府は、社会主義計画経済から市場経済化へ移行し、その過程で JICA の技術支援を受け、徴税システムの近代化を推進した。JICA は 1998 年よりモンゴル国の徴税能力を強化し、公共政策の基盤となる税収を増加させるための協力を下記五つの段階においてモンゴル国国税庁（General Department of Taxation）に対して実施してきた。

### ① モンゴル国市場経済化支援開発調査（徴税機能強化フェーズⅠ）

1998 年 8 月から 1999 年 9 月

徴収能力向上のための包括的な調査をし、当時主体となっていた現金取引に関する検査手法を移転した。

### ② モンゴル国市場経済化支援開発調査（徴税機能強化フェーズⅡ）

2000 年 6 月から 2001 年 8 月

課税・徴収に関する監督法等モンゴル国国税庁による税制改正案への助言、帳簿のない業者に対する課税を実施するため所得の推計要領を技術移転。

### ③ 徴税機能強化支援フェーズⅡ：納税者情報管理制度整備

2001 年 11 月から 2003 年 3 月

納税者の情報が検査官個人に滞留し、そのため税務検査が非効率になっているという状況を改善するため第三者情報システムを開発した。具体的には税関等他機関の情報を国税庁内の納税者情報とマッチングさせ、検査での活用を実現したものである。

### ④ モンゴル国税務教育システム構築調査

2003 年 12 月から 2005 年 7 月

モンゴル国国税庁が自助努力で安定した税収の確保が恒久的にできるようカリキュラム、教材など職員の教育制度を整備、同時に第三者情報システムのフォローアップや納税者サービス、広報を支援した。

### ⑤ モンゴル国税務行政強化プロジェクト

2006 年 1 月～2008 年 9 月

人材育成・研修では「税務教育システム構築調査」で策定した短期行動計画の実施と進捗管理、徴税業務では検査事例集、さらには業種別検査マニュアルを作成。徴収においては滞納整理の手法として催告制度を試行した。第三者情報システムも更に改良し、VAT 申告書の電子化とともに VAT インボイス処理のシステム化が実現された。他機関からの税務関連情報も拡大させた。また、納税者サービスでは納税者の利便性を考え、納税者サービスセンターの設置を推進した。更に、ウランバートル市内におけるコールセンターの設置も支援、電話相談業務の開始に貢献した。

2011 年現在、税収は歳入の 82-84% を占め、対 GDP 比率で 36-38% と同所得水準の国に比較して高い税収比率を確保していた。上記プロジェクトを通じ、JICA はモンゴル国の税

収の確保に多大な貢献をしていたが、近年の目覚ましい経済の発展と共に新たな課題が生まれた。

オユ・トルゴイの銅・金鉱床やタワントルゴイ石炭鉱床の開発により、多くの外資企業が進出するようになってきた。また、近隣国からの中小規模の投資も増加している。それらに伴い法の不備を突いた租税回避行為や移転価格問題が発生するようになった。

しかしながら、国際課税に関する制度は未整備で、この問題に対峙できる人材も多くはいなかった。特に租税条約などは今まで財務省が対応してきたため、MTA (Mongolian Tax Administration) には人材がほとんどいなく、今後調査や交渉面において国際課税問題に対応できる人材を育成することが急務であった。

また、税収が増える一方で、滞納額も増加し、税収の10%を占めるとされていた(業務指示書より)。この解決のためには様々な滞納処理が行われており、催告センターの設立も検討されていた。

これらの実情を背景として、モンゴル国政府は我が国に対して、技術協力を要請するに至った。

## 1.2 上位目標

モンゴル国における税務行政が適正かつ公正に執行される。

指標

- (1-1) 法に従った国際課税・徴収関連の規則やガイドラインの策定
- (1-2) プロジェクトの結果を踏まえた提言ならびに必要な税法の改善案
- (2) 税務行政に対する全般的な満足度の向上

## 1.3 プロジェクト目標

MTAの国際課税と徴税に関する能力が強化される。

指標

- (1) 国際課税と徴税についての能力を必要とする役職に適格な職員を配属
  - (2-1) 情報交換(EOI)ユニットの設立・運営
  - (2-2) EOIに必要な基本情報取得のための協定を他の省庁と締結
  - (2-3) 国や情報交換ユニットに送信される照会件数
- (3) 通常の調査における国際課税件数
  - (4-1) 催告センターにおける取扱い件数
  - (4-2) 地方の税務署における徴収の効率改善

## 1.4 期待される成果

PDMで設定された下記の指標を念頭に達成するよう進めていく。

- 1. 国際課税に関する基礎的な知識及び技能が習得される。

## 指標

- (1) 国際課税に関する法、規則のレビュー結果
- (2) 国際租税条約の手続きや実施手法の把握
- (3) 国際課税の能力開発における CP のニーズの把握
- (4) 適格な CP20 名が本邦研修で国際課税基礎研修を完了
  - カントリーレポート報告
  - 日本の国税庁概要
  - 国際課税の概要、講義(移転価格税制、APA、MAP、EOI 等)
  - 国内の税務署、税務大学校視察(国際課税コース履修職員とのディスカッション等)
  - 必要な改善点、国際課税の意味、ならびにその他の問題についての協議
- (5) 国際課税に関する基本研修に 40 名以上の適格な研修生が参加
  - 国際課税(以下詳細)
  - 課税の基本概念
  - 租税条約(OECD/UN モデル租税条約含む)
  - 外国税額控除、過小資本税制、外国子会社に関する規則、タックスヘイヴン対策税制(CFC 税制)等
  - 移転価格(TP)の基礎
  - 事前確認制度(APA)
  - 相互協議(MAP)
  - 情報交換(EOI)

## 2. 国際課税の実務を実施するための基盤が整備される

### 指標

- (1) 情報管理の現況分析
- (2) OECD の「所得と財産に対するモデル租税条約」モンゴル語訳のレビュー完了
- (3) 国際課税人材育成計画の承認
- (4) 国際課税カリキュラムのレビューと改定の完了
- (5) 国際課税教材の作成
- (6) 研修センターの 3 名以上の講師候補者が国際課税の講師育成研修を受講
- (7) 国際課税調査の課題に関するフォローアップ研修ならびに助言の提供

## 3. MTAの徴収手続きが改善される。

### 指標

- (1) 現在の徴収方法や部門の対応のレビューおよび分析結果
- (2) 滞納税金の回収に必要な部門対応の策定
- (3) 提案されている催告センター設立に向けた基本原則、規則、手続きの定義

(4) 催告センターの運営開始

### 1.5 対象地域

本プロジェクトはモンゴル国ウランバートル(国税庁)及び21県、ウランバートル市・区(税務署)を対象としたものである。

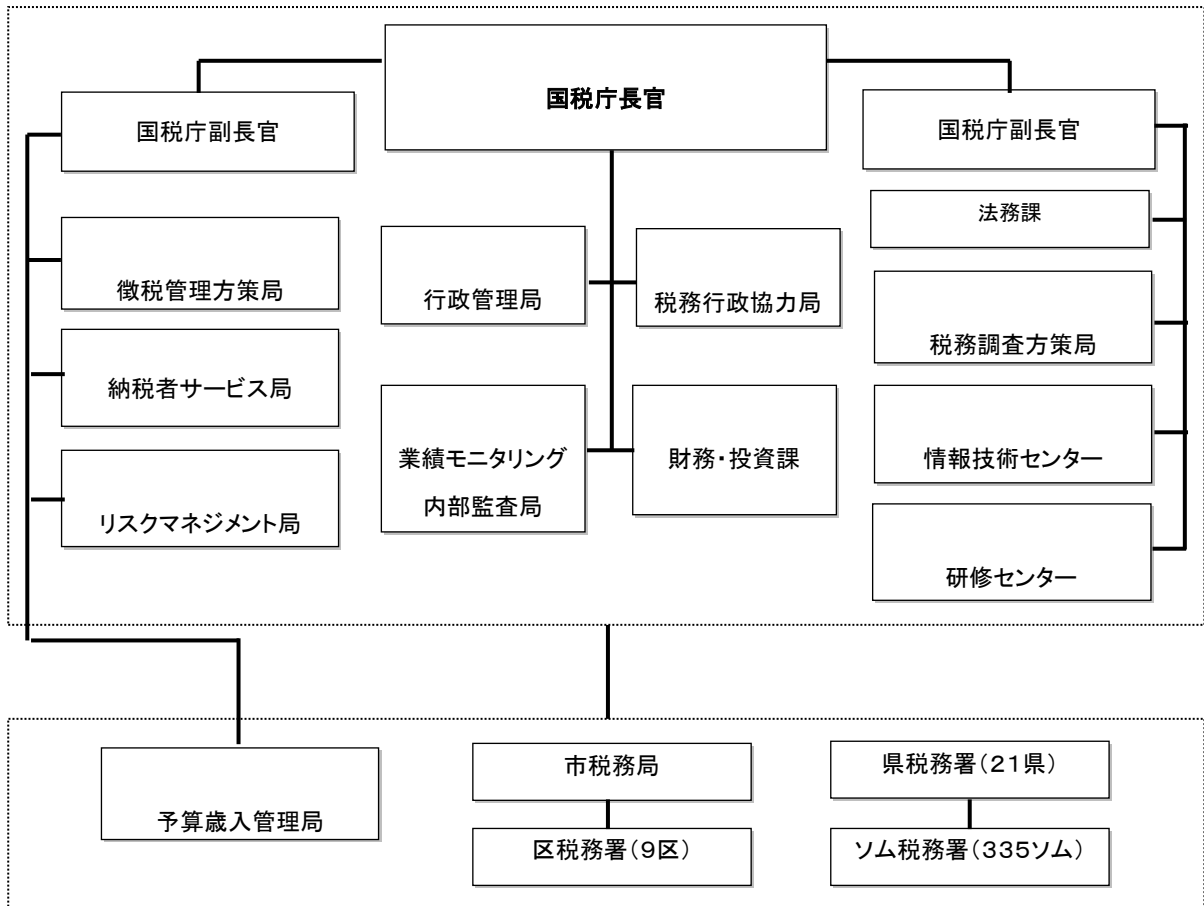




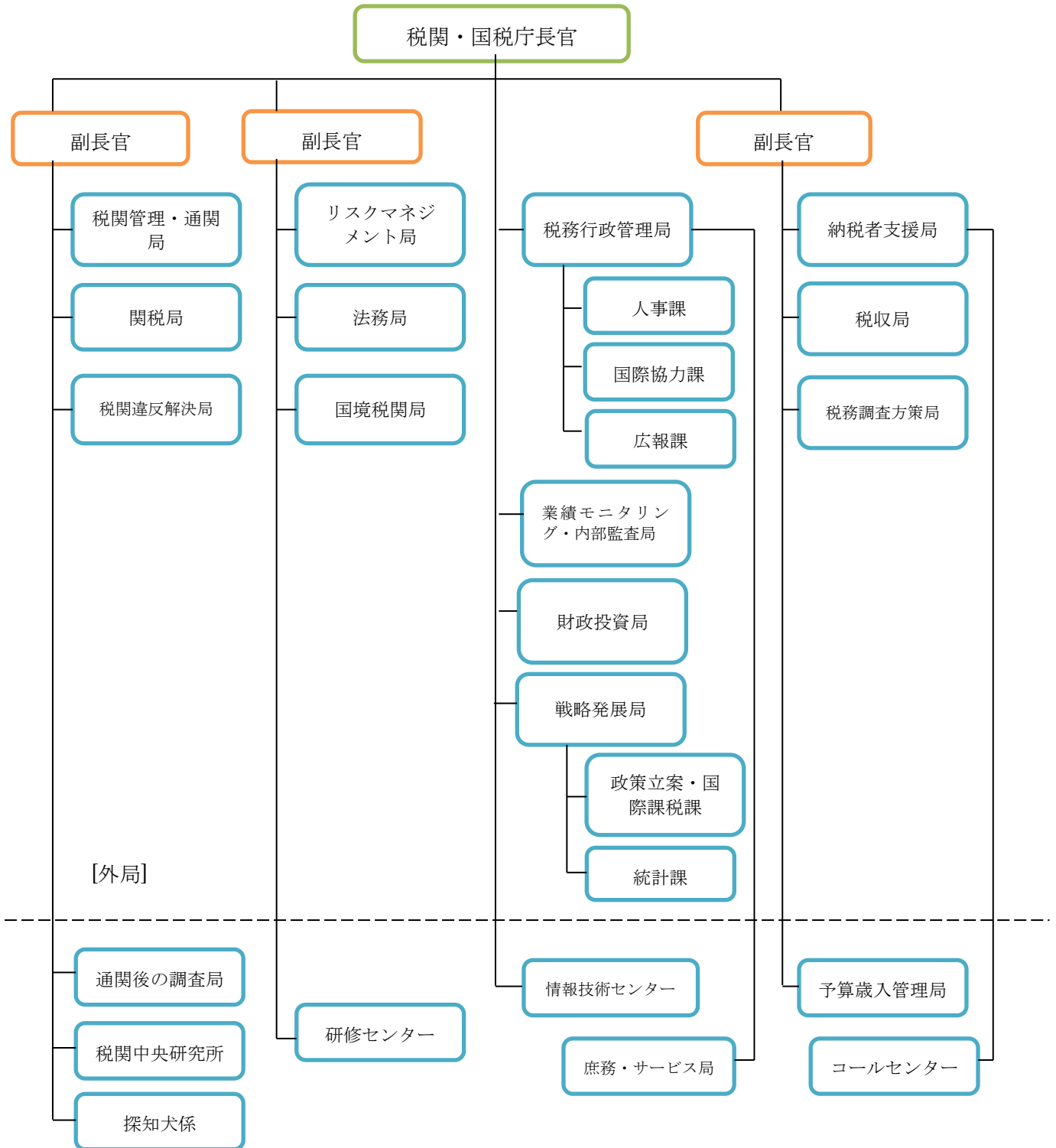
## 1.6 関係官庁・機関

2016年1月税関庁との統合がなされた。しかしながら、2016年7月分離した。下記は統合前、統合後、及び分離後の最新組織図。

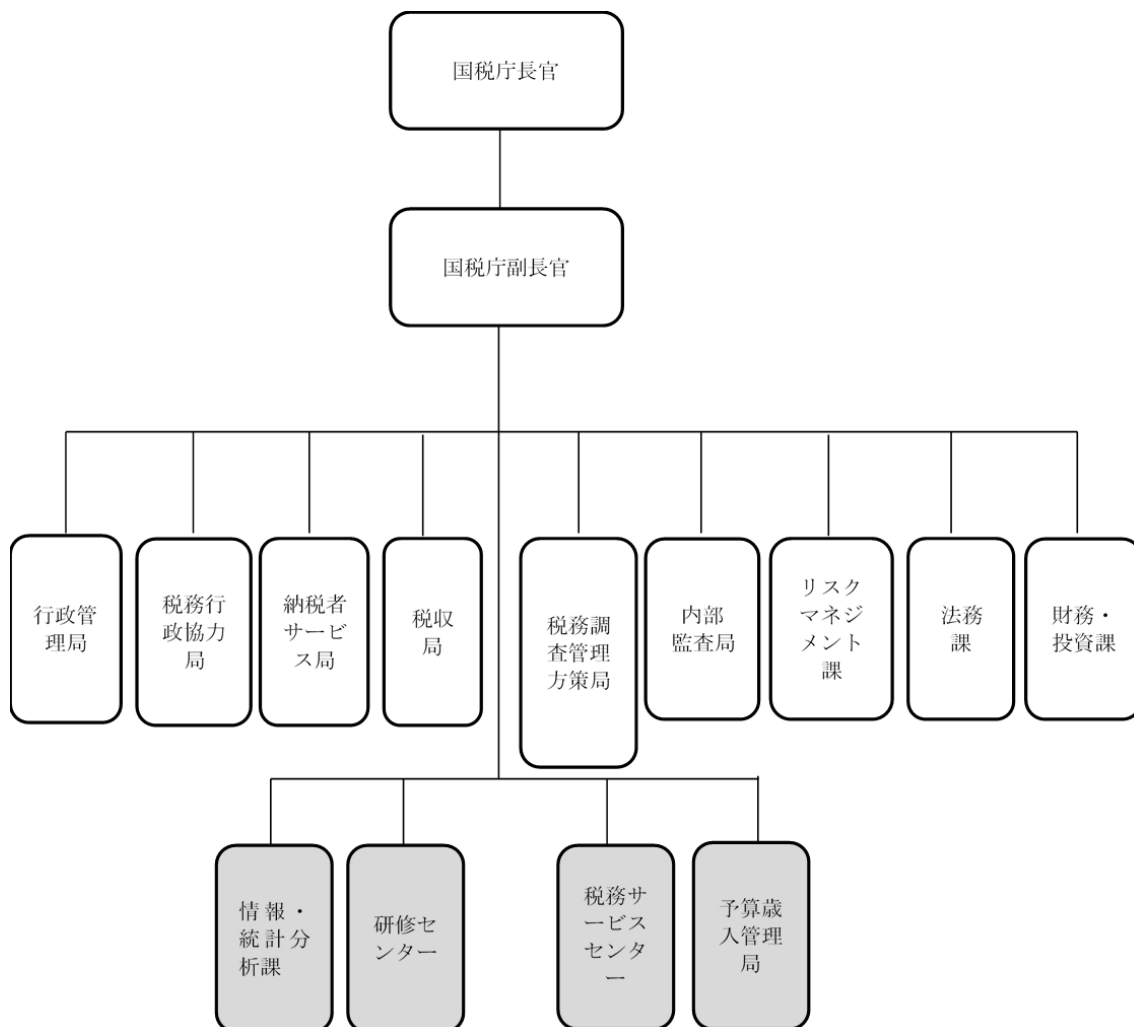
### (1) モンゴル国国税庁(General Department of Taxation) 統合前



統合後 税関・国税庁



分離後（最新）



## 2. 活動内容

### 第一年次（2013年12月～2014年7月）

\*下記番号はフローチャート記載番号

#### 1 ワーク・プラン（第一年次原案）の作成・協議

##### 1-1 関連資料・情報の収集整理（翻訳発注）

既存の資料を整理、必要な資料を可能な範囲で入手した。OECD モデル租税条約についても翻訳を開始した。

##### 1-2 業務計画書の作成

下記事項を盛り込んだ業務計画書を作成、ワーク・プラン案（インセプションレポート）に活用できるよう整理して記載した。

###### ① プロジェクトの概要

###### ② プロジェクトの実施方針

- ・プロジェクト実施の基本方針
- ・プロジェクト実施の具体的方法
- ・プロジェクトの実施体制（JCC の体制含む）
- ・業務フローチャート
- ・要員計画

###### ③ その他

- ・便宜供与
- ・その他必要事項

##### 1-3 ワーク・プラン案（第一年次）の作成

1-2 の業務計画書を活用し、プロジェクトの基本方針・方法、業務工程計画等を作成し、ワーク・プラン案として取りまとめた。

記載項目案は1-2に準ずる。

##### 1-4 ワーク・プラン案（第一年次）の協議

GDT に対してワーク・プラン案を説明した。関係者と協議し、プロジェクトの全体像を共有した。

##### 1-5 実施体制作り

上記と並行して JCC ならびにプロジェクト実施チームの体制作りをした。GDT は税務行政協力局長 B. Badral をカウンターパートチームのヘッドとする体制をとった。

## 2 モンゴル国国際課税に係る現況調査

### 2-1 国際課税関連法令・規則の情報収集

- (1) 具体的な国際税務問題のピックアップ
  - (2) モンゴル国税法全体の特徴の把握（(1)と並行して行う法律体系の整理。）
- 第一年次に作業を実施、この情報を下記2-3に反映させた。

### 2-2 租税条約の現況把握と改善への助言

現況把握に基づき、2016年2月に租税条約の問題点（総括編）を作成、問題点と同時に改善点を提示した。また国際課税中級研修においてもOECDモデル条約や各国の租税条約とモンゴル国の租税条約を対比する資料を作成、コア職員に自国の制度の不備な点について学ばせた。

### 2-3 モンゴル国国際課税に係る現状報告書の取りまとめ

上記を踏まえて本邦研修を念頭に報告書に取りまとめた。また、日本国国税庁によるEOI研修でモンゴル国を訪問予定の日本国国税庁職員の参考としていただいた。

## 3 ニーズ調査

税務調査官25名に対してヒアリング調査を実施、また研修センター所長、研修担当者から国際課税研修の実施状況と課題をヒアリングした。

## 4 ワーク・プラン（第一年次）の合意

協議やこれまでの活動で修正したワーク・プラン（第一年次）により、プロジェクト実施方法を明確化し、またベースラインも明確にした。モンゴル国側と協議、意見交換し、2014年3月4日第1回JCCを開催し、ワーク・プランにつき合意をした。

### 5-1 国際課税本邦研修（入門）の準備

2014年2月17日～28日に日本国国税庁を受け入れ先として研修が実施された。プロジェクトでは下記の業務を実施した。

- (1) コア職員となりうる人材がGDTと協議の上選定した。ここで落選した者もモンゴル国での基礎研修に参加する候補者としてリストに入れた。決定後、カンントリーレポート等本邦研修準備を促した。
- (2) 日本国国税庁にはこれまでの調査結果を踏まえて、需要や要望を伝え、研修内容について研修生のレベルを伝えた。

また、研修資料の作成（翻訳）をプロジェクトで支援した。

## 5-2 国際課税本邦研修の実施

税務大学校により 2014 年 2 月 17 日～28 日、本邦研修が実施された。日程、プログラム、研修生リストは研修実績に記載。

## 6 国際課税モンゴル国現地研修の準備、実施

国際課税モンゴル国現地研修を下記の要領で実施した。

### 6-1 カリキュラムの作成、教材の準備

### 6-2 現地研修の実施

まずは幹部に知識を浸透させるため、幹部向け研修を実施。日程、プログラム、研修生リストは研修実績に記載。

#### (1) 国税庁幹部職員向け国際課税研修

- ・期間：2014 年 4 月 9 日～11 日
- ・対象：国税庁幹部職員 27 名(他にオブザーバー参加あり)
- ・目的：今後の組織全体の国際化対応推進のため、幹部職員に国際課税の基礎知識を修得させる。

#### (2) 本邦中級国際課税研修派遣候補者研修

- ・期間：2014年6月24日～7月4日
- ・対象：本邦中級国際課税研修派遣候補者21名(他にオブザーバー参加あり)。  
\* 第1回本邦研修参加者以外
- ・目的：我が国で開催される中級国際課税研修への派遣候補者に国際課税の基礎知識を修得させる。(本研修参加者と2014年2月の本邦研修参加者のうちから次年度本邦中級研修への参加者が選抜されるため、本邦研修参加者との知識レベルを整合させることを主眼とする。)

#### (3) 情報交換セミナー

- ・期間：2014年5月19日～5月21日
- ・対象：コア職員、幹部

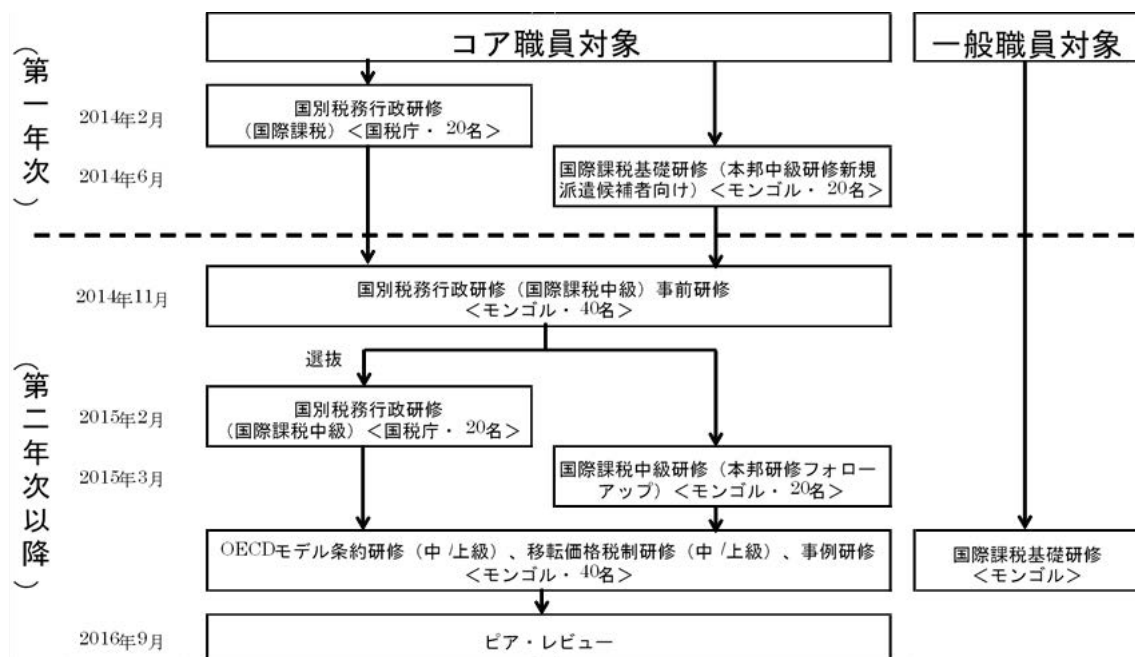
日本の国税庁より小杉企画専門官、中島税務大学校教育官が現地に派遣され、セミナーを実施した。プロジェクトでは、事前の情報収集と講義資料の翻訳、セミナー運営、研修評価を支援した。

### 6-3 現地研修評価と内容の改善

研修終了後、試験による受講生評価と、受講生による研修評価を実施、評価分析の上、結果を反映させた。

## 7 人材育成計画の作成

下記の計画を作成、それに基づき実施した。



## 8 情報交換に関する現状分析

国際課税を念頭に課税対象企業に関する省庁間での情報交換に関する現況把握と分析を行った。その上で専門家が租税条約の問題点に関する報告書を作成、日本国国税庁による情報交換セミナーの参考資料として提供した。またモンゴル国と各国の租税条約を研修資料に盛り込んだ。

## 9 「OECD Model Tax Convention on Income and on Capital (OECDモデル租税条約)」のモンゴル語翻訳

上記を翻訳、レビューに関しては下記のプロセスで実施した。

### (1) OECD モデル租税条約 2010 年版の翻訳とレビューに関して

翻訳量が膨大であったため、2名の翻訳者が翻訳を実施した。訳が一致しない、文章の意味がうまく伝わっていない部分については、見直し作業をし、再翻訳をした。

理解しにくい文章、部分に関して、プロジェクト専門家が助言をした。また、専門的な用語の中でモンゴル語にどのように翻訳すればよいのかという言葉については CP 並びに GDT 協力局長と意見交換し、作業をすすめた。

### (2) OECD モデル租税条約 2014 年版の翻訳に関して

JCC 会議での国税庁からの要請に基づき OECD モデル租税条約 2014 年版の改正分の翻訳を 2015 年 2 月から 5 月までの期間で完成させた。また、改正されていない部分の翻訳も再び見直した。

## 徴収分野

### 10 徴収部門の滞納整理の現状調査

#### 10-1 現状調査の実施

(1) 法人課税、所得課税、付加価値税課税、不特定所得課税法等、税目別の徴収状況を確認した。財産調査手法の現況と、各種マニュアルの存在も確認した。

(2) その後、主要税務署を訪問し、税務職員に現場の問題点をヒアリング（法令がないからできないのか、執行がだめなのか）をした。

確認事項は以下の通り。

- ① 法律の規定の確認
- ② 規定に基づいた滞納処分の流れの状況確認
- ③ 実務で行われている滞納処分の状況分析と問題点の抽出
- ④ 訴訟事例も含めた滞納処分の問題点の把握
- ⑤ 催告センター設置動向

#### 10-2 報告書の取りまとめ

以上の問題点を集約したペーパーを報告書として取りまとめ、日本国国税庁が実施する本邦研修（徴収）のたたき台とした。

## 11 徴収分野本邦研修

### 11-1 徴収分野本邦研修の準備

- (1) 候補者の人選方法を GDT と協議し、方針決定した。
- (2) 日本国国税庁にこれまでの調査結果を踏まえて、需要要望を伝えた。また、研修内容について研修生のレベルを伝えた。

### 11-2 徴収分野本邦研修の実施

2014年4月6日～4月12日に税務大学校による本邦研修を実施した。実施に際し、教材の翻訳をプロジェクトで支援した。カリキュラム、研修生リストは研修実績に記載。

## 12 徴収業務改善への助言

### 12-1 徴収業務改善への助言

調査結果を踏まえて徴収業務改善への助言を行った（催告センター以外）。現行の法律のままできる事務執行面と、法改正が必要な法制度面とわけて助言を行った。重点事項は下記の通りで、プロジェクト期間中継続して助言を行った。

（事務執行面）

- (1) 通知書の送達方法の見直しと改善
- (2) 「徴収事務実施の手引き(マニュアル)」の作成及び提供



- (3) 業務管理資料の提供
- (4) 滞納処分の実施状況（1年分）の把握  
（法制度面）
  - (1) 日本の国税徴収法のモンゴル語訳版の作成と提供
  - (2) 租税優先権の論理的根拠と日本の租税優先権制度の具体的内容の説明
  - (3) 新しい法制度導入の必要性に関する調査の実施（裁判所及び裁判判決執行機関の整理状況、2008年の「大赦法」により租税が免除を受けた状況など）

## 12-2 催告センター設立前の助言

日本の催告センターを参考にしてもらうため、関係者に実情をレクチャーした。

- ・集中電話催告センターの内容を説明した（図解で説明）。
- ・実績の説明をした。「センターにより、平成22年7月から平成23年6月までの1年間で、催告対象約77万者のうち、約53万者（68.4%）が完結し、約9万者（11.1%）が納付誓約となっている。」などの説明。
- ・催告センターの導入目的
- ・運用の開始時期
- ・運用体制
- ・実施内容

これらの情報を基にCPと設立に必要な規則を検討した。

## 13 業務完了報告書（第一年次）の作成

第一年次契約終了時を目途に業務完了報告書を取りまとめ、提出した。次期活動計画として第二年次ワーク・プラン（案）を入れた。

### 第二年次（2014年8月～2016年10月）

## 14 ワーク・プラン（第二年次原案）の作成・協議

### 14-1 業務計画書の作成

下記事項を盛り込んだ業務計画書を作成、ワーク・プラン案に活用できるよう整理して記載した。

- ① プロジェクトの概要
- ② プロジェクトの実施方針
  - ・プロジェクト実施の基本方針
  - ・プロジェクト実施の具体的方法
  - ・プロジェクトの実施体制（JCCの体制含む）
  - ・PDM（指標の見直し）
  - ・業務フローチャート

- ・要員計画
- ③ その他
- ・便宜供与
- ・その他必要事項

#### 14-2 ワーク・プラン（第二年次案）の作成

14-1の業務計画書を活用し、プロジェクトの基本方針・方法、業務工程計画等を作成し、ワーク・プラン案として取りまとめた。

#### 14-3 ワーク・プラン案（第二年次）の協議と合意

GDTに対してワーク・プラン案を説明した。関係者と協議し、プロジェクト終了までの課題と対応についても協議。その上で、第2回JCCを2014年10月22日に開き合意した。

#### 15 人材育成計画の作成

第一年次作成計画を引き続き実施した。

#### 16 コア職員の人材育成

##### 16-1 モンゴル国現地第2回研修の実施

6-3の結果を踏まえ第2回目のモンゴル国内研修を実施した。

- ・期間：2014年11月17日～28日
- ・対象：コア職員40名
- ・目的：第二年次本邦研修参加者選定も兼ねた研修を実施した

##### 16-2 国際課税中級本邦研修の準備

2回のモンゴル国内研修の受講生の試験の成績を踏まえて、2015年1月～2月に実施が予定されている高度な本邦研修の候補者20名を選抜した。選抜の際は試験の結果のみならず面接で意欲や本人の資質も確認した。最終的な人選はGDTが行った。

##### 16-3 国際課税中級本邦研修の実施

2015年2月16日～27日に実施された。プレゼンテーションのためテーマごとにグループ分けをした。研修生のレベル、研修内容につき実施機関である日本国国税庁に提案をした。また、講義資料につきプロジェクトで翻訳を実施した。カリキュラム、研修生リストは研修実績に記載。

##### 16-4 中級レベルの国際課税に関する研修の実施

2015年4月に40名のコア職員にフォローアップ研修を実施した。2月の本邦研修生による

本邦研修を基に行ったプレゼンテーションや、参加研修生のプレゼンテーションも設け、理解度や問題意識を共有させた。また、2016年2月29日から3月4日もフォローアップ研修を実施した。また、2016年6月21日～23日日本国国税庁職員（税務大学校水上教授、鈴木教育官）による海外取引調査法、移転価格税制、相互協議にかかる現地セミナーが実施された。カリキュラム、研修生リストは研修実績に記載。

#### 16-5 GDT 国際課税関連規則、国際課税業務支援

詳細は 5.1 に記載。移転価格税制などの専門的税法を充実すること、移転価格税制を効率的に運用するためのレギュレーションを充実すること、という指導を行なってきた。その成果として、GDT は、法人税法に、移転価格関連条文を挿入した。すなわち、法人税法第 4 条として事前確認（APA：Advance Pricing Agreement）を、第 12 条として独立価格比準法などの移転価格算定手法（TPM：Transfer Pricing Method）などを作成した。

また、この法人税法案を基礎として、移転価格税制執行のためのレギュレーションを作成している。更に、移転価格課税調査マニュアルも作成しつつある。EOI についても継続して助言を実施している。

#### 17 その他の一般職員の人材育成

一方で、その他の一般職員には GDT 研修所で、国際課税研修を実施した。

##### 17-1 一般職員向け研修事業のカリキュラム・教材の作成/更新と研修所へのPDCAサイクルの導入

既存の研修センターの国際課税コースのテーマは、①租税条約（OECD租税条約コメントリー含む）、②対現地法人課税、③恒久的施設（PE）課税である。8時間が国際課税研修として割り振られていることを確認した。国際機関等によって実施された研修テキストを活用していた。整合性をはかるために第一年次の本邦研修、モンゴル国で実施された国際課税研修で活用した基礎教材を参考に、モンゴル国の実情に沿った教材にした。

3 回の実施により、徐々に研修センター講師の講師割合を高める工夫をした。3 回目の研修で改善を行い、一般職員向け研修教材は整備され、研修センター講師が自前で講義をできるようになるように配慮した。

##### 17-2 国際課税に関するトレーナートレーニングの実施

コア職員研修を通じ 3 名の講師を育成した。また、コア職員にモンゴル国国税庁研修センター主催で実施される国際課税研修において講師を務めさせ、専門家がその講義をチェックし、当該コア職員の知識と教授スキルの向上を図る方式とした。

##### 17-3 一般職員向け研修の実施

下記の 3 回を実施した。

- 第1回一般職員研修 2015年8月17日～21日  
第2回一般職員研修 2016年3月7日～3月11日  
第3回一般職員研修 2016年9月19日～9月23日

## 18 業務進捗報告書（第二年次）の作成

第二年次以降は4回の進捗報告書を作成した。

## 19 中間評価調査

実施されず。

## 20 本邦研修参加者の業務従事状況モニター

中級研修受講者をモニターする。ピアレビューを意識して、各自の国際課税業務実績（国際課税業務になる可能性があるものを含む）を定期的に集約した。フォローアップ研修を通じ、事例を扱うことにより各人の抱えてる問題を共有できるようにした。

## 21 ピアレビューの準備実施

2016年9月ピアレビューを実施した。業務従事状況モニターも踏まえ、各自の抱える事例と、傾向を発表させ、他の参加者と共有した。同僚を意識して事例を集積し、また他者の優れた事例を共有させ、全体の底上げを図った。

ファシリテーターは以下のことも意識して進めた。

各受講生が

- ① 国際税務の各基本事項が総合的に理解できていること  
→バラバラの知識ではなく、一つの国際税務問題に対し、その論点が総合的、体系的に説明できること。
- ② その解決がモンゴル国の税務法令とどの程度関連しているのか、していないのか、の説明ができること。
- ③ モンゴル国の国際税務調査組織に対し、プラスの提言ができること。

①は、国際標準ルールの総合的理解への努力

②は、モンゴル国法令の再検討

③は、自国の国際税務調査の見直し

これらに留意して進めていった。

## 徴収分野

### 22 催告センターの日常の運営と改善に関する助言

#### 22 - 1 機材調達

第二年次は下記の催告センター機材を調達した。

調達に際しては仕様書、入札書類の作成その他、JICAガイドラインにそって必要な事務手続きを実施した。

No		数量
1、2	サーバー	2
3	ルーター	1
4	パソコン	8
5、6	PBX（ヘッドセット付）	1(8)
7	スイッチ	1
8	プリンター	1
9	コピー機	1
10、11、12	机、椅子	各9
13	キャビネット	1
14	クローゼット	2
15	ハンガー	1

## 22 - 2 催告センター運営の助言

催告センターの運営状況を把握したうえで、下記につき助言をした。詳細は後述。

- ① 催告対象者について
- ② 従事事務の状況について
- ③ 返戻事案の処理について
- ④ 受電業務の対応について

## 22 - 3 催告センター評価

催告センター効果測定資料を作成、催告センターの業務にかかる効果測定のための資料（「OPの従事状況表」、「(税目別) 受・発信件数・接触率・納付約束件数・同税額調べ」等）を作成した。

## 22 - 4 催告センター改善

開所が2016年3月でオフラインの限定的実施からスタート、その後徐々に地区を拡大しているが、実施後間もないので当面は運営の推移を見て結果を取りまとめていく段階である。

徴収分野では上記以外の活動として日本国国税庁職員によるモンゴル国現地セミナーを2015年5月19日～21日に開催した。

## 23 徴収業務整備支援

前述12-1に記述。

## 24 終了時評価調査

終了時評価調査に関し、評価調査団に協力し、これまでの全ての技術移転結果、目標達成度、業務実績、指標について取りまとめた。その上で、2016年3月17日第3回JCCを開催した。

## 25 業務完了報告書の作成

第二年次終了時を目途に業務完了報告書を作成した。

業務完了報告書記載項目は下記の通り。

- ① プロジェクトの概要（背景・経緯・目的）
- ② 活動内容（業務フローチャート）
- ③ プロジェクト実施運営上の課題・工夫・教訓（業務実施方法、運営体制）
- ④ プロジェクト目標の達成度（中間レビュー・終了時評価結果の概要等）
- ⑤ モンゴル国の今後の税務行政における国際課税、徴収分野の提言

添付資料

PDM（指標の見直し及びベースライン設定）

業務フローチャート

専門家派遣実績

研修員受け入れ実績

供与機材・携行機材実績（引き渡しリスト含む）

合同調整委員会議事録等

教材

## 26 プロジェクト終了時セミナー

GDTが主体となり、プロジェクトの成果についてセミナーを開催し、周知を図る。GDT、財務省、その他の機関を招聘した。内容はこれまでのプロジェクト活動と実績をGDTより紹介し、専門家が国際課税、徴収分野の今後の取り組むべき方向を提言した。

## 3. プロジェクトの成果

終了時評価が2016年3月に実施された。下記成果は終了時評価資料からの抜粋である。成果1は達成され、成果2は概ね達成され、成果3は達成され、プロジェクト目標は概ね達成されたと評価された。

## プロジェクト目標

MTA の国際課税と徴税に関する能力が強化される。

### 指標

(1) 必要な資格要件（最低 2 年の業務経験、基礎コース修了者の中から選出された者）を満たした職員が、国際課税と徴税に関する能力を必要とする部署に配置される。

国際課税：2016 年 1 月に国際課税課が新設され、国際課税の基礎知識、5 年以上の実務経験を有する 5 名の職員が配置された。

徴収：徴収局に 20 名、コールセンターに 30 名（催告センターはそのうち 10 名）の職員が配置された。

(2-1) 情報交換（EOI）ユニットが設立され運用が開始される。

独立した EOI ユニットの設立は中止。国際課税課に EOI セクションができ、2016 年 1 月から業務が開始された。

(2-2) 諸省庁と情報交換を行うための合意文書が作成され、その下で、EOI に必要な基礎的な情報が収集される。

従来から情報交換業務は実施されている。2016 年 2 月時点で国内関係 27 機関と合意協定を締結しており、EOI セクション開設後も同協定に基づく情報交換業務が実施された。

(2-3) ユニットに問い合わせを送付した国のリスト及びその件数

2016 年 1 月の設置以降、ロシアから 4 件の情報交換依頼を受理した。

(3) 通常の税務調査において発覚した国際租税に関する事案例の件数

国際課税調査は実施されているが、国際課税調査に関する事案例のデータの蓄積がなく事案例の増減の推移については評価不能であった。インタビュー調査の結果、検査官は日ごろから国際課税事案（PE や TP）に対応している点、研修で得た知見を活用している点を確認した。

(4-1) 催告センターで対応した滞納整理の件数

催告センターの開所は 2016 年 3 月 17 日。現在は順次地区を拡大している（詳細データは後述）。今後運用が本格化することで、税務効率の改善に寄与する見込み。

(4-2) 各地域の税務署における徴税効率が向上する。

GDT のモニタリング結果では、2012 年以降、徴税効率は年々向上しているが、本プロジェクトと向上との間の因果関係は不十分である。

成果 1 国際課税に関する基礎的な知識及び技能が習得される。

### 指標

(1) モンゴルの国際課税に関連する法令、規則及びルールに関するレビュー報告書が作成される。

2014 年 5 月ごろまでに法令・規則のレビューを終え、報告書を作成済。日本での移転価格に関する事案を集めた事例集の作成や、GDT が作成中の「価格移転に関するマニュアル」

に対する助言を実施した。

(2) レビュー報告書の作成により、租税条約運用上の手順・手続きが明確になる。

モンゴル国が諸外国と締結している租税条約と OECD 租税条約とを比較検討し、同国が抱える国際課税上の課題を分析した。分析結果は、パワーポイント (PPT) スライドに収められ、関係者で共有。第二年次から実施された国際課税研修の資料として活用された。

(3) C/P の国際課税に関する能力習得ニーズ分析をした報告書の作成。

プロジェクト第一年次に税務職員 25 名を対象に国際課税に関するアンケート調査を実施。結果は、第 1 回 JCC (2014 年 3 月) で報告済。

(4) 資格要件を満たした職員 20 名が、日本で実施する国際租税に関する入門レベルの研修を終了する。

国税庁が設定した人選基準を満たした 21 名が 2014 年 2 月の本邦研修に参加した。

(5) 国際課税に関する研修を最低 40 名の資格要件を満たす研修受講者が受講する。

協力期間中に、本邦研修を除く国際課税研修が 10 回実施され、40 名以上 (累計約 421 名) が国際課税に関する研修を受講した。

## 成果 2 国際課税の実務を実施するための基盤が整備される。

指標

(1) 現在の情報管理の状況に関する分析レポートが作成される

当該調査を実施し、報告書を作成、2014 年 5 月日本国税庁による EOI (Exchange of Information) セミナーの参考情報として活用された。

(2) 「OECD 所得と財産に対するモデル租税条約」がモンゴル語に翻訳される。

2010 年版の翻訳は 2014 年夏、2014 年改定部分についても、2015 年 5 月に翻訳を完了した。

(3) 国際租税に関する人材育成計画が承認される。

第一年次にコア人材と一般税務職員向けの包括的な人材育成計画を策定した。2014 年 10 月の第 2 回 JCC で承認された。

(4) 既存の国際課税に関する研修カリキュラムのレビューと修正が完了する。

第一年次に既存のカリキュラムのレビューを実施。第 1 回一般職員向け国際課税研修に向けカリキュラム案を完成した。国際課税に関する一般職員研修で活用した。2016 年 9 月に実施する第 3 回一般職員向け国際課税研修で最終化した。

(5) 国際課税に関する教材と教科書が作成される。

本邦研修や現地国内研修用の教材として 20~30 種類の資料を作成した。

(6) 最低でも 3 名の研修センター講師が国際課税に関する講師養成訓練を受ける。

本邦研修、現地中級国際課税研修を受講したコア職員のうちトレーニングセンター講師の 3 名を育成した。一般研修で講師として起用された。

(7) 国際課税調査の課題に関するフォローアップトレーニングが行われる。



2015年4月及び2016年2月にコア職員に対してフォローアップ研修を実施した。

### 成果3 MTAの徴収手続きが改善される。

指標

(1)現在行われている徴税に関する方法やその他の制度に関する調査の結果がJCCで共有される。

2014年4月の本邦研修（徴税）の受講者数名とともに、モンゴル国の徴税方法やその制度に関する現状と課題の分析を実施。本邦研修で結果を発表した。税務署の自立執行権や租税優先権についての課題が抽出された。結果は、第2回JCCにおいて関係者で共有した。

(2)必要とされる滞納整理方法が明らかにされ、内容が整備される。

事務処理の標準化・省力化や徴収効率の向上を今後取り組むべき課題として確認した。業務実施体制の見直しを提案した。

(3)催告センターの設立に関する基本的原則、規則、実務要領がマニュアルにまとめられる。

2014年11月までに催告センターの規則を作成した。

(4)催告センターが設立される。

催告センターは、2016年1月に納税者支援局の外局として設置され、2016年3月に開所した。

## 4. プロジェクト実施上の課題と教訓

### 4.1 プロジェクト実施上の課題

#### (1)税関庁と国税庁の統合

省庁統合があり、税関庁と国税庁が統合された。情報の共有化により業務効率を上げる等の観点からの統合であるが、2016年12月、1月は統合による業務の整理や人事、場所の移動で業務に若干の支障が出た。その後2016年7月、総選挙の結果を受けて税関庁と国税庁が分離された。

また、催告センター設置は計画より約1年遅れて開所した。理由として公務員削減による人材の配置決定の遅れ、Debt Management System との技術的調整等に加え、両庁の統合による組織再編やシステム部局が外部に独立する等で更にオープニングが遅れた。

#### (2)税法改正の行方

自力執行権の導入などプロジェクトによる提言も取り入れられ法案の提出がなされ、審議に入る見込みであったが、総選挙の影響で審議に入らないままプロジェクトの終了を迎えた。

## 4.2 プロジェクト実施上の教訓

### (1) 継続的なプロジェクト活動

JICA のモンゴル国における税務行政プロジェクトは 15 年以上にわたり（一部断続的な期間がある）実施されてきた。GDT、JICA 共にプロジェクトの進め方を知っており、この継続性が運営をスムーズにし、プロジェクト効果を上げる要素となっている。また、現地スタッフも長きにわたり従事しており、特殊性がある税務行政分野で質の高い翻訳、通訳が行われており、技術移転を効果的に実施する上で欠かせない要素となっている。これらは長い期間の間に醸成されてきたもので、行政分野の技術移転においては、継続した支援が人材育成効果をあげるものとする。

## 5. 国際課税分野、徴収分野における課題と提言

### 5.1 国際税務行政、国際課税調査、国際税制、租税条約

#### 5.1.1 国際税務行政体制

##### (1) モンゴル国の国際税務行政体制への JICA 専門家の今までの活動とその成果

- 1) JICA の国際課税研修により、その成果として、GDT は国際課税の重要性を認識し、GDT は戦略発展局（現税務行政協力局）内に、政策立案・国際課税課を新設した。
- 2) EOI（情報交換）業務を効率的に行うため、GDT 内に EOI ユニット設置を指導した。その成果として、2016 年 1 月に、戦略発展局内に EOI セクションが設置され、EOI 担当官が 1 名おかれることとなった。
- 3) 更に、この EOI 担当官の業務を効率的にすべく、税務調査管理方策局、リスクマネジメント局、戦略発展局内の統計分析課などの部局の担当官との業務手続き等について意見交換を行うよう助言したところ、その成果として、当該関係課で適宜話し合いが行われ情報の共有が行われることとなった。
- 4) EOI 担当者や税務署長等に EOI の周知を行なうよう助言を行なったところ、その成果として、担当局長の EOI 周知徹底を目的とするレターが税務署長へ送付され、かつ、EOI 担当者がウランバートル市内の税務署に赴き、税務署長に EOI の利用の説明を行い、情報交換制度が認知された。
- 5) 情報交換依頼案件は、2014 年ロシア 3 件、ハンガリー 1 件、ウクライナ 1 件、2015 年には、ロシア 3 件、中国 1 件、マレーシア 1 件ととぎれず、上記 EOI セクション設置後は、ロシアとの 4 件の情報交換があった。その後も情報交換について引き続き努力を行なっている。

##### (2) モンゴル国の国際税務行政体制の現状、今後の問題点と提言

###### (現状)

GDT 税務行政協力局が情報交換業務、相互協議、国際税制策定等、国際税務行政全体について管理している。また、調査に関する GDT 全体業務の指揮監督を行なうのは、GDT 税務調査管理方策局である。また、現実に国際課税調査を行なっているのは予算歳入管理局である。主要税務署でも国際課税調査を行なっている。

#### (問題点)

GDT 税務行政協力局内の業務は、2016 年 1 月戦略発展局当時に政策実施・国際課税課を新設することにより、より国際課税の充実が図られている。ただし、国際課税業務は、EOI・情報交換以外明確に区分されていない。相互協議の担当セクション、国際税務の法令通達作成業務の担当セクション、条約整備の担当セクションがない。法令通達作成業務と条約整備は立法関連の仕事なので本来財務省管轄であるが、財務省の国際課税担当のマンパワーは少なく、当面の間、国際税務理論も行政も、GDT が財務省と協同歩調をとり国際課税業務をする他はない。

更に、GDT 税務行政協力局内には国際課税調査のスペシャリストがいないので、税務行政協力局内の職にも国際課税調査のベテランを配属し、上記の本来の税務行政協力局内の業務を補完させたほうが良い。何故なら、国際課税調査の仕組み、知識が国際課税理論の理解を立体的なものにするからである。この点については、GDT は既に、優秀な調査官を税務行政協力局内に配置している。

一方、GDT 税務調査管理方策局には、日本国国税庁調査課の国際調査管理官のような国際課税調査担当セクションがないので、機動的な国際課税調査はできない。また、法人税等の税目別担当セクションがない。また、予算歳入管理局の国際課税は同局で完結するので、調査結果報告書は GDT 税務調査管理方策局には提出されない。税務署で行う国際課税の GDT における最終監督個別セクションがない（日本国国税庁は法人税課等の個別税目セクションで最終監督する。）。

また、GDT には日本国国税庁にある総務課のような組織がなく、財務省との一般的連絡窓口がない。従って、税務執行官庁である GDT の税制改正要望等の一般的意見が適切に財務省などに伝わらない。

最後に、GDT には国際課税専門の法令審理部がない。法務部はあっても、国際課税専門でないところが問題である。日本では、国際課税調査は、主に、国税局で行われるから個別の調査案件については、その担当部局の個別案件ごとに、法令審理が行われる。たとえば、国税局調査部で行った国際課税調査は、国税局調査部の法令審理セクションが「本当の国際課税法令に適合しているのか？」という観点から徹底的にチェックする。調査結果が「だめ」といわれることもある。これが、税務署の調査なら、国税局の法人税課の法令審理担当がチェックする。この検討は、国税庁の調査課の国際調査管理官セクションや国税庁の法人税課でもダブルチェックすることが多い。重要で、課税金額の多い調査案件ほど日本では慎重に法令チェックが行われるのである。

#### (提言)

#### 1) GDT 税務行政協力局内の組織の充実

GDT 税務行政協力局内の政策実施・国際課税課の人員の充実を図り、局内に、EOI セクションの他、相互協議セクション、国際課税関連法令セクション、条約整備セクションを作る必要がある。セクションについては、本来複数人の人材が必要だろう（同一セクションにおいて二人以上で討議して仕事を進めていくことが必要である。）が、当面は、現在同課に所属する 5 名の人員を将来上記セクションのいずれかのチーフにすることを目標に国際業務を担当させるべきである。

#### 2) GDT 税務調査管理方策局の組織の充実

GDT 税務調査管理方策局に、国際調査管理官を設置すべきである。このリーダーに、早急に、上記問題点の解消も含めて、ある程度の GDT 税務調査管理方策局内の（上記問題点の解消を含めた）国際課税調査体制のデザインを策定させるべきである。また、将来的には、専門性を高めるため税目別のセクションをつくるべきであろう。セクションとしては、法人税、所得税、消費税などは個別に独立しているほうが、GDT 全体の組織上の効率が良い。また、将来 OECD 型の税法にしてゆくことを考えると個々の職員がすべての税法に習熟することは困難である。

#### 3) EOI 担当補助職員の設置（GDT 税務調査管理方策局）

GDT 税務行政方策局にある EOI 担当を補助すべく、GDT 調査管理方策局国際管理官指揮下に EOI 補助職員を設置すべきである。すべての GDT 実施の国際課税調査情報は GDT 調査局の国際調査管理官に集まるわけであるから、それらの調査が必要としている外国との情報交換資料がスピーディに GDT 国際協力局に依頼できるようになるために、GDT 調査局にも EOI 担当補助職員を置くべきである。

#### 4) 総務課の設置あるいは総務担当職員の配置（GDT 税務行政協力局内）

国際課税業務に関し、財務省と適宜情報共有すべき総務課の設置あるいは総務担当職員の配置を GDT 税務行政協力局に行うべきである。前述した税制改正等においても、国際課税に関する案件が増加すると見込まれる。一般的に GDT 税務行政協力局総務セクションは、財務省と日ごろの意思疎通を密接に行うべきで、合わせて財務省以外の国内各官庁との連絡をも行い、効率的な GDT の国際課税行政に大いに資することとなる。

#### 5) 法令審理担当官の設置

GDT 税務調査管理方策局国際調査管理官の指揮下に国際課税調査法令審理担当官を置くべきである。予算歳入管理局や税務署が行った国際課税調査案件の法令・条約上の法的審理を行なうものとする。

### 5.1.2 国際課税調査

#### (1) モンゴル国の国際税務調査への JICA 専門家の今までの活動とその成果

国際課税調査については、約 40 名の専門家を中心に、移転価格課税、PE（恒久的施設）課税に関する日本の調査事例、判例などを研修してきた。その成果として、GDT の職員に

は、法令・OECDモデル条約等の国際規範に基づく調査という厳格な調査態度が浸透してきており、また、現実に国際課税調査を行なっている職員以外にも、国際課税への認識が高まってきている。

また、GDT 税務行政協力局内に、国際課税調査担当者が配置され、国際課税の法令審理・立法準備担当者と国際課税調査担当者との良いコラボレーションが生まれた。これにより、調査での経験を国際課税法案、租税条約の立案に活かし、更に、法令・条約に基づく国際課税調査の浸透という双方向のプラスの効果が発生している。

更に、国際課税調査の手法に関して、日本の様々な事例・判例等を研修してきたその第1の成果として、JICA プロジェクトチームが「国際課税事例集」を編纂し、GDT に寄贈した。この本は、現在 GDT 職員により国際課税研修等でかなり活用されている。第2の成果として、GDT が、JICA 専門家チームの意見をも参考にして、GDT 調査官の国際課税調査のための国際課税調査マニュアルを作成しつつある。

## (2) モンゴル国の国際税務調査の現状、今後の問題点と提言

### (現状)

国際課税調査は、主に、予算歳入管理局で行われている。しかし、税務署でも、移転価格課税、PE 等の国際課税問題が発生している。また、当該国際課税プロパーの問題でなくとも、タックス・ヘイブンに係る海外取引調査などの問題も発生している。

国際取引では、民法上の検討が必要な国際税務契約が存在している。

### (問題点)

- 1) 国際課税問題も基本的には、海外取引に関する法人税等の税務調査がうまくできるかということが重要な前提条件である。従って、日本の法人税調査では、海外への資金、海外からの資金をきちんと把握することが重要なスキルとなっている。そのため、日本の国税調査官は、銀行への文書照会に加え、現実に銀行に臨場し、銀行内で納税者の預金状況をチェックするという、いわゆる銀行調査が徹底して行われている。納税者の預金に関する銀行への文書照会があるがそれだけでは不十分である。
- 2) 予算歳入管理局、税務署で行われている国際課税調査の内容、結論が統一的に整理される必要がある。
- 3) モンゴルの産業構造は資源採掘業等の特色があるものがあり、それらの専門的な業種別国際課税調査マニュアルがない。
- 4) 国際税務契約の検討を民法でも行っていないので、国際取引の分析の精度が高くない。たとえば、国際取引の虚偽性をモンゴル民法 56 条の Void Transaction (無効取引) 条項等で検討していない。この民法 56 条の検討は今後の国際的租税回避事件解決の基礎をなすものである。

### (提言)

- 1) 調査官が実際に銀行に行き、銀行内で納税者の預金関係を調査する本来の銀行調査のシ

システムを作る。

- 2) 予算歳入管理局、税務署の国際課税調査の案件を統一して整理し、国際課税調査に活かす。
- 3) 業種別国際課税調査マニュアルを作成する。
- 4) 今後の国際的租税回避事件に対処するため、モンゴル民法 56 条の検討も行うべき。

### 5.1.3 国際税制

#### (1) モンゴル国の国際税制への JICA 専門家のこれまでの活動とその成果

モンゴル国の移転価格税制について、法律、施行令 (Regulation) 等について、日本の国際税務法令と比較し、移転価格税制などの専門的税法を充実すること、その移転価格税制を効率的に運用するためのレギュレーションを充実すること、という指導を行ってきた。その成果として、GDT は、法人税法に、移転価格関連条文を挿入した。すなわち、法人税法第 4 条として事前確認 (APA : Advance Pricing Agreement) を、第 12 条として独立価格比準法などの移転価格算定手法 (TPM : Transfer Pricing Method) などを作成した。今後議会で審査される予定である。

また、この法人税法案を基礎として、移転価格税制執行のためのレギュレーションを作成している。更に、移転価格課税調査マニュアルも作成しつつある。

#### (2) モンゴル国の国際税制の現状、今後の問題点と提言

##### (現状と問題点)

- 1) 移転価格課税を採用した場合、経済的二重課税が発生する。その二重課税防止のために、租税条約では対応的調整 (Correlative Adjustment: 例えば相手国が我が国の関連会社に移転価格課税を行ない、それが租税条約上の相互協議で適切と合意されたのなら、我が国でも、相手国の課税所得 (税額ではない) の金額と同じ額の所得金額を、我が国の関連会社の課税所得金額から減額すること) 条項が通常定められている。しかし、租税条約上の対応的調整条項だけでは国内での実効性がない。そのため、国内法において、対応的調整ができるような条項が必要であるのに、現在、国内法に対応的調整の法文がない。この法文がないと、移転価格課税の租税条約上の相互協議における合意は困難となる。
- 2) 移転価格課税で算定手法によってはその使用が欠かせない産業統計データベースが GDT に導入されていない。このデータベースを使用しなければ、移転価格課税で現在一番良く使われる TNMM (Transactional Net Margin Method: 取引単位営業利益法) が GDT では使えない。
- 3) 日本でも、移転価格課税調査上、納税者に前もって、自らの関連取引を、自国の移転価格税制上の移転価格算定方法に照らし合わせて正しいか否かを検証させる方法 (文書化 : Documentation) が法人税法施行令に規定されている。最近、OECD でも BEPS (Base Erosion & Profit Shifting: 税源浸食と利益移転) に対処するために、より深度ある文書化の提言を行

なっている。BEPS 最終報告書では、OECD は各国に対し、多国籍企業グループへ、国別報告事項、マスターファイル、ローカルファイルの3つの文書作成を求めてほしいとしている。日本もそうだがモンゴル国もこの BEPS 最終報告書の文書化提言に対応した税制となっていない。

4) また、日本では移転価格税制同様特別法に規定されているタックス・ヘイブン対策税制、外国子会社配当金の益金不算入制度、外国税額控除制度、コーポレート・インバージョン税制、過少資本税制、過大支払利子税制、日本で法人税法等に規定されている国際源泉所得課税、非居住者課税、外国法人課税、国際相続・贈与税課税、国際消費税課税の規定が日本の規定と比べて不足している。BEPS 最終報告書では、タックス・ヘイブン対策税制(CFC (Controlled Foreign Company) 税制) については6つの構成要素を示し、効率的な税制とすることを勧告している。

#### (提言)

- 1) 移転価格課税における対応的調整の条文を国内法に早急に必ず挿入すべきである。
- 2) 移転価格課税において、各国で一番よく使用される算定手法である TNMM (Transactional Net Margin Method) に欠かせない産業別データベースを導入する。
- 3) OECD の BEPS 最終報告書を良く研究し、OECD 型の納税者により深い説明を求める文書化の法制を早急に整備すべきである。
- 4) 移転価格税制に限らず、上記のような広範囲な国際課税分野を、BEPS 最終報告書や日本税制等と比較研究し、充実した立法を準備し、財務省と協議する。少なくとも、日本の税制と比較し、どこが不足しているのか、に焦点を合わせ、移転価格課税以外の国際課税分野の今後の立法準備作業表を GDT が作成し、財務省と協議しなければならない。

### 5.1.4 租税条約

#### (1) モンゴル国締結租税条約への JICA 専門家の今までの活動とその成果

JICA 専門家は OECD モデル条約の国際規範としての意義を指摘した。また、プロジェクトで OECD モデル条約のモンゴル語翻訳を実施し、職員がより効率的に OECD モデル条約を使用できるようになった。また、各研修でも、国内税法と OECD モデル条約を比較し、調査で実用的に同条約を使用できるように指導している。

#### (2) モンゴル国締結租税条約の現状、問題点と提言

OECD・国連モデル条約及び日本の締結した主要条約との比較によるモンゴル国締結主要条約の現状、問題点と提言を行う。この前提として、今回分析した租税条約の基本的ポイントがあるので、事前にそれを示す。

##### [租税条約の基本的検討論点：条文番号は OECD モデル条約]

- ・ PE (恒久的施設) 条項 (5 条) に関しては PE 認定の要件は妥当か？
- ・ 事業所得条項 (7 条) に関しては OECD 型帰属主義となっているか？ 同モデル条約の

AOA (Authorized OECD Approach) 原則を導入しているか？

- ・特殊関連企業条項 (9 条) に関しては、条約に対応的調整条項は挿入されているか？対応的調整の国内法が規定されているか？
- ・配当所得条項 (10 条) に関しては、親子会社間を優遇税率にすべきか？
- ・利子条項 (11 条) に関しては、中央銀行関連を免税にすべきか？
- ・使用料条項 (12 条) に関しては、居住地国課税か源泉地国課税か、リース料が使用料条項の適用になるか？
- ・日米租税条約の観点から、投資条項の優遇税率に関して、その適用に一定の要件を必要とする「特典制限条項 (LOB : Limitation on Benefit)」と「導管取引条項」を挿入すべきか？
- ・譲渡所得条項 (13 条) に関しては、不動産化体株式の譲渡所得課税要件に価値 50%要件 (譲渡される株式の価値の 50%超が不動産) を入れるか？「事業譲渡類似株式」についてどこまで規定するか、その他資産について、OECD 型「譲渡者居住地国課税」か「資産居住地国課税」か？
- ・教授免税条項 (OECD 規定なし) を導入するか？
- ・学生条項 (20 条) に関しては、免税経費制限を入れるべきか？
- ・外税控除条項 (23 条) に関しては「税額控除方式」とすべきか？「タックス・スペアリング・Credit 条項」は廃止しているか？
- ・相互協議条項 (25 条) に関しては「相互協議申立期間」は 3 年か？「相互協議合意の実施条項」はあるか？「相互協議通達」はあるか？
- ・情報交換条項 (26 条) に関しては、銀行情報を理由に情報提供を拒否していないか？
- ・徴収共助条項 (27 条) に関しては、徴収共助そのものの規定はあるか？

(3) 上記ポイントの観点から、モンゴル国締結主要条約の現状、問題点、提言を示す。

**PE 条項 (OECD モデル 5 条③項) の現状、問題点と提言**

・**建設 PE の認定期間**

(現状) モンゴル国締結条約においては、18ヶ月超 (モンゴル・中国条約 5 条②項 a)、(モンゴル・UAE 条約 5 条③項)、24ヶ月 (モンゴル・ロシア条約 5 条②項 g)、(モンゴル・トルコ条約 5 条②項 g) 等の長期の PE 期間設定のものがある。モンゴル国締結の他の条約の PE 認定期間は 12ヶ月超から 3ヶ月超 (モンゴル・クエート条約 5 条③項のみ) である。OECD モデル条約等では 12ヶ月超が標準である。UN モデル 5 条③項 a) では 6ヶ月超という短期の PE 認定期間設定である。

(問題点) OECD モデル条約、UN モデル条約の認定期間と比較すれば、対中国・対ロシア等の条約における建設 PE の認定期間は長期間すぎる。モンゴル国はインバウンド経済であるのだから、このような対中国・ロシアの PE 認定期間は調査上の問題が発生する。

また、BEPS における OECD モデル条約 5 条③項勧告案でも指摘されているが、12ヶ月超という認定期間であっても、恣意的な契約分割が行われやすいので、調査上の問題がある。



BEPS 最終報告書では、「密に関連する企業（50%超の支配関係にある企業）等を利用し、意図的に契約期間が 12 ヶ月を超えないように分割した場合には、分割された契約期間を自動的に合算することとする。」とされている。OECD モデル条約コメンタリーパラ 3・18にあるように、「・・・契約を、それぞれが 12 ヶ月を超えない期間となるよう、いくつかの部分に分割し」、PE 認定回避をしようとする企業があることは問題である。

（提言）OECD モデル条約や国連モデル条約の PE 認定期間（12 ヶ月超から 6 ヶ月超）と整合性をとるべきである。ちなみに、日本・米国条約は、建設 PE は 12 ヶ月超、日本・中国条約は建設 PE は 6 ヶ月超である。

#### ・建設のコンサルティング PE 認定期間

（現状）モンゴル・中国条約 5 条③3 項 b) では、18 ヶ月超となっている。UN モデル 5 条③項 a) では 6 ヶ月超となっている。OECD モデルではコンサルティング条項はない。

（問題点）対中国条約の認定期間は UN モデル条約とあまりにも異なり、長期間すぎる。

（提言）対中国条約の認定期間を UN モデル規定の 6 ヶ月超の期間と整合性をとるべきである。ちなみに、日本・中国条約は、建設工事のコンサルティング PE 認定期間は、継続する 12 ヶ月の内、6 ヶ月を超える期間行った場合は PE 扱い。但し、機械及び設備の販売又は賃貸に関連するコンサルティング業務を行なう場合は、期間に関わらず、PE とはみなさない。日米条約ではコンサルティング条項はない。

#### ・準備的補助的活動（OECD モデル条約 5 条④項）

（現状）「準備的補助的活動」条項は形式的に PE 認定するものとなっている。

（問題点）「準備的補助的活動」といっても、実質的には、企業全体の活動の本質的かつ重要な部分を構成する活動であるものもあり、PE と認定すべきものがある。BEPS 最終報告における OECD モデル条約 5 条④項勧告案では、「1. 活動の種類ではなく、実質から判断し、準備的・補助的性質のみ PE にあたらないこととする。2. 細分化された業務であっても、一体として運営されており、合わせてみれば、準備的補助的と言えない場合、PE にあたることとする。」と規定されている。

（提言）将来、本条項についても、実質判断で PE が考察されてくるので、条約改正等では、良く BEPS の思考過程を熟慮することが重要である。

#### ・代理人 PE の認定（OECD モデル条約⑤項）

（現状）モンゴル締結の条約では、在庫保有の常習的保有代理人は PE とはされていない。

（問題点）UN モデルは、在庫の常習的保有代理人も PE としている。UN モデル 5 条⑤項 b) では、「(契約締結権限などの) 権限は有しないが、当該一方の締約国内において、当該企業に属する物品又は商品の在庫を常習的に保有し、かつ、当該企業に代わって反復して当該在庫の引き渡しを行うこと。」と規定されている。BEPS 最終報告書における OECD モデ

ル条約 5 条⑤項勧告案では、代理人 PE の定義は拡大され、「1. (海外) 企業に代わって行動する者の名によって当該 (海外) 企業の所有する物品、役務の提供に関し、(海外) 企業に代わって行動する者が契約する場合や、2. (海外) 企業に代わって行動する者が「契約の締結につながる主要な役割」を担っている場合には、(海外) 企業に代わって行動する者は代理人 PE にあたる。」とされている。

(提言) PE 認定要件の緩和を議論している OECD の BEPS 最終報告書を検討し、今後条約交渉を行なう場合に参考とすべきである。日本・米国条約では、在庫保有代理人も注文取得代理人も従属代理人でないで、PE ではない。日本・中国条約も、在庫保有代理人は PE でないが、注文取得代理人は従属代理人として PE である。

#### ・保険会社代理人の PE 認定

(現状) 保険会社について PE 認定の規定はない。

(問題点) UN モデルのように、保険会社の代理人も PE と認定できる要件を規定すべきである。OECD モデル条約には、保険会社につき、明確な規定はないが、OECD モデル条約コメンタリーパラグラフ 6・39 は、「外国保険会社の代理店は、PE の条件を満たさないが故に、これらの保険会社は、その事業から生じる利得に対して、ある国で租税を課されることなく、当該国で大規模な事業を行なっているのではないかと思われる。」としており、UN モデル 5 条⑥項は「外国保険会社が他方の国で、独立代理人以外の者を通じて、再保険を除く保険料の受領を行い、また、再保険を除く危険の保険を行う場合には、当該企業 (外国保険会社) は他方の国に PE を有するものとされる。」と規定している。

ちなみに、日本・米国条約、日本・中国条約いずれも、保険会社については明記していない (わずかに日本・フィリピン条約、日本・ベトナム条約、日本・メキシコ条約に保険会社の規定あり)。

(提言) OECD モデル条約コメンタリー、UN モデル条約を参考に、今後、保険会社に対する PE を考察することも有益である。

#### ・独立代理人規定 (OECD モデル条約⑥項)

(現状) 形式上独立代理人でも実態的に従属代理人となる場合について、モンゴル締結条約は何も規定していない。

(問題点) UN モデル 5 条 7 項 2 文は、形式上独立代理人でも、PE である従属代理人となる要件設定を設定している。つまり独立代理人としての通常の活動と異なる場合は、PE とならない独立代理人とはいえない。モンゴル締結条約はこのような規定を考慮していない。解釈上 UN モデルも参考とすべき。UN モデル 5 条 7 項では、第 2 文で、以下のように規定している。UN モデル 5 条 7 項 2 文では、「もっとも、当該代理人の活動がもっぱら又は主として当該企業に代わって行われる場合であって、商業上又は資金上の関係において、当該企業と当該代理人との間に、独立企業の間設けられる条件と異なる条件が設けられ、

又は課されている時は、当該代理人は、この項にいう独立の地位を有する代理人とされな  
い。」と規定されている。BEPS 最終報告書における OECD モデル条約 5 条⑥項勧告案では、  
BEPS においては、独立代理人は以下のように規定されている。「専属的に親会社等のため  
の業務を行なう代理人は独立代理人にあたらぬ」。

(提言) UN モデルの独立代理人の考え方は、BEPS 最終報告書と同じである。従って独立  
代理人の PE 認定は実質的に行うべきであり、そのための、条約文言の訂正を考慮すべき  
である。ちなみに、日本・米国条約も日本・中国条約も、契約締結代理人が PE に該当す  
る従属代理人で、PE に該当しないのは、独立代理人と子会社である。しかし、独立代理  
人、子会社であっても、従属代理人の要件(例えば、契約締結権限の常習的行使等がある  
場合。)を認定できれば、PE となる。

#### ・サービス・PE の内容

(現状) モンゴル・中国条約 5 条③3 項 b) やモンゴル・UAE 条約 5 条④項は、サービス  
PE 認定期間を 18ヶ月としている。

(問題点) 2008 年 OECD モデル条約コメンタリー 42.23a) b) で、サービス PE が導入された  
(OECD モデル条約 5 条には書いていない)。つまり、コメンタリーによると、サービスに  
おいては 183 日を基準と総収入基準 50%も規定されている。ちなみに、日本・米国租税条  
約や日本・中国租税条約には、サービス PE の概念はない。但し、日本・タイ条約では、コ  
ンサルティング業務を PE と明記している。

(提言) PE 認定期間が 18ヶ月というのは、サービス PE に限らず、厳格すぎる。OECD モ  
デル条約 5 条コメンタリーを参考にすべきである。

#### ・事業所得条項 (OECD モデル 7 条) の現状、問題点と提言

(現状) モンゴル国締結租税条約には、事業所得条項はあり、PE で無ければ課税なしの原  
則と帰属主義が規定されているが、OECD モデル条約 7 条②項のような、AOA 原則は規定  
されていない。

AOA 原則「PE に帰属する所得を計算する際は、当該 PE が持つ機能、資産、リスクを  
考慮した上で、PE に帰属する所得を計算する。」と規定されている。ちなみに、日本・米国  
条約、日本・中国条約には帰属主義はあるが、AOA 原則の規定はない。また、日本・英国  
条約を除いて他の条約では帰属主義は規定されているが、AOA の原則はまだ、導入されて  
いない。

(問題点) モンゴルでは AOA 原則についての認識がなされていない。AOA 原則の導入に  
ついて何も考えていなければ、将来租税条約改定時に交渉が困難となる。

(提言) 2015 年 1 月現在、日本は OECD モデル条約を踏まえて、2013 年 12 月の「日英租  
税条約」改正議定書に挿入した。しかし、今後日本の改訂条約については AOA に基づく計  
算方法の規定が導入されるだろう。よって、以下の OECD モデル 7 条②項の AOA 規定の条  
文を参考にされ、今後のモンゴル国のすべての租税条約改正交渉時には、相手国とこの規

定の挿入について議論できるよう条文のドラフトを作成しておくべきである。

#### ・特殊関連企業条項 (OECD モデル 9 条) の現状、問題点と提言

(現状) モンゴル・シンガポール条約、モンゴル・カナダ条約等、これらの重要規定が入っていない条約がある。モンゴル国とドイツ、カナダ、インド、ベルギー、シンガポール、マレーシア、ポーランド、チェコ、ルクセンブルグ、ウクライナ、ベトナムなどは、この対応的調整 (Correlative Adjustment) の規定が条約上ない。

(問題点) 対応的調整条項が租税条約に挿入されていない場合、経済的<sup>2</sup>二重課税は解消されない可能性が高くなる。すなわち、当方の移転価格課税で経済的<sup>2</sup>二重課税が発生した場合、当方で課税した所得について、条約相手国で減額処理をしない可能性が出てくる。

しかし、条約で対応的調整の条項があっても油断はできない。なぜなら、仮に、当方の国内法で対応的調整に関する法律がない場合、相手国の移転価格課税について、当方で対応的調整としての所得減額ができない可能性があるからである。相手国も、それを予想して、当方の移転価格課税に関して、相互協議で合意をしない可能性が出てくる。対応的調整は、租税条約だけではなく、国内法の規定も必要である。

(提言) OECD モデル 9 条②項、UN モデル 9 条②項のような、対応的調整の規定を条約に入れることが必要である。移転価格の経済的<sup>2</sup>二重課税の防止に配慮していないもので、国際課税理論上問題がある。日本・米国条約は対応的調整条項があるが、日本・中国条約には対応的調整条項はない。また、日本・ベルギー条約、日本・ポーランド条約、日本・チェコスロバキア条約では対応的調整規定がない (ウクライナとは租税条約がない)。

#### ・配当所得条項 (OECD モデル条約 10 条) の提言

(提言) 一般の配当税率に対する親子会社間配当の税率は、OECD モデル条約との整合性を図るべきである。一般の税率は 10%、親子間税率は 5% とすべき。

#### ・利子条項 (OECD モデル条約 11 条) の提言

(提言) 今後モンゴル国締結条約の改正における利子条項の源泉税率においては、政府中央銀行系の税率を他との銀行及び他の一般法人等と区別し、0% 又は軽減した税率を考慮すべきである。

#### ・使用料条項 (OECD モデル条約 12 条) の提言

(提言) モンゴル国が条約締結国との改正交渉において、将来居住地国課税に変更する際は、以下に出てくる日米租税条約 22 条の「特典制限条項」(LOB 条項) のような「特典制限条項」を挿入すべきである。但し、日本でも、経済環境を考慮して、最近まで源泉地国課税であったので、早急に OECD 型の居住地国課税にする必要はない。

・**特典制限条項(LOB : Limitation on benefit) (日米租税条約 22 条) に関する提言**

(提言) モンゴル国もその BEPS の条約濫用の項目を理解し、いくつかのモデル条項を作成しておく必要がある。また、モンゴル国も将来、このような LOB 条項等の導入を条約改定相手国と議論する準備をしておく必要がある。ちなみに、日米租税条約は既に 22 条で LOB 条項、10 条⑩項で「導管取引」条項を規定している。この LOB 条項は BEPS 最終報告書においても、租税条約の濫用防止のため、租税条約への創設が勧告されている。

・**譲渡所得条項 (13 条) に関する提言**

(提言) OECD モデル条約、UN モデル条約のように、譲渡所得条項に 50% の価値要件 (一方の締約国の居住者が株式の譲渡によって取得する収益に対しては、その価値の 50% 超が他方の締約国に所在する不動産であれば、他方の締約国で課税できる。) を挿入するか、原則不動産所在地国課税とするのが明快である。

モンゴル国締結の条約で譲渡所得条項改正において、モンゴル・中国租税条約型の事業譲渡類似の株式条項でできるだけ統一すべきである。所有要件は 25%、販売要件は 5% が良い。

・**教授免税条項 (OECD 規定なし) に関する提言**

(提言) モンゴル締結の全条約に、教授免税条項を挿入すべきである。学生のみ免税では、教育の交流という点から良くない。

・**学生条項 (20 条) に関する提言**

(提言) 学生条項には免税経費の制限をなくすべきである。

・**外税控除条項 (23 条) に関する提言**

(提言) 税額控除方式をとるならば外国税額控除限度額の国内法規定を整備すべきである。モンゴル国締結条約から、タックス・スペアリング条項を廃止すべきである。

・**相互協議条項 (25 条) に関する提言**

(提言) モンゴル国締結条約の相互協議申立て期間は 3 年が妥当である。租税条約の相互協議条項には、相互協議の合意実施条項をいれるべきである。相互協議通達を发出すべきである。

・**情報交換条項 (26 条) の現状、問題点と提言**

(現状) 例えば、モンゴル・シンガポール条約、モンゴル・カナダ条約、モンゴル・中国条約では、OECD モデル条約 26 条⑤項に規定する金融機関情報であることを理由とした情報提供拒否は認めないとする条項がついていない。

(問題点) OECD モデル条約 26 条⑤項の以下の規定が抜けている (なお UN モデルもこの条文を参考に (UN モデルコメンタリー、パラグラフ 5・27) 同様な条文を 26 条⑤項で策定した。)

「提供を要請された情報が銀行その他の金融機関・・・の所有に関する情報であることのみを理由として、一方の締約国が情報の提供を拒否することを認めるものと解してはならない。」

(提言) 銀行からの情報については、モンゴル国の銀行と GDT の関係を熟慮し、将来の銀行からの情報収集について考えておくことが肝要である。

日本国国税庁の調査では、国税局、税務署は、法人税調査などで、銀行に入り調査対象納税者の口座を確認すること (銀行調査と呼んでいる。) は、銀行との取り決めで、当然のことである。また、銀行に実際に調査官が入り、納税者の口座等を確認できなければ、納税者の真実の所得が把握できない。情報交換においても、(銀行秘密ということ) 銀行調査ができないことを理由に、情報の提供を拒否することなどあり得ない。

従って、例えば、日米租税条約 26 条に、OECD モデル条約 26 条⑤項に規定するような「銀行秘密を理由とした情報提供拒否不可能条項」がなくとも、実務上、銀行調査を行い真実の納税者所得情報を相手国当局に提供するのは全く問題がない。それは、銀行調査が国内の法人税調査における通常の業務であるからであり、銀行調査を実施しない法人税等の調査は本来の調査ではないと考えられている。

#### ・徴収共助条項 (27 条) の現状、問題点と提言

(現状) モンゴル国締結主要条約において、OECD モデル 27 条、UN モデル 27 条にある「徴収共助」の規定がまったくない。例えば、モンゴル・中国、モンゴル・シンガポール、モンゴル、カナダ条約では徴収共助の規定がない。

(問題点) OECD モデル条約 27 条、UN モデル条約 27 条にある徴収共助の規定が条約にない場合、税務当局はその租税管轄を超えて、租税を徴収することはできない。ちなみに日米租税条約では 27 条で徴収共助の規定がある。日本・シンガポール条約では 27 条、日本・カナダ条約では 24 条 A に徴収共助の規定がある。しかし、日本・中国租税条約には徴収共助の規定はない。

(提言) 国際取引が増加する今日、国際的な徴収面のことを考え、租税条約に徴収共助の規定を挿入すべきである。

## 5.2 国際課税における人材育成

### 5.2.1 国際課税における人材育成の基本方針

国際課税コア職員の人材育成は、税務行政庁における国際課税システムの執行能力レベルを以下のとおり設定し、初級⇒中級⇒上級という発展プロセスを想定し実施した。

表1 国際課税システム執行能力レベル

レベル	制度の知識に関する能力（知識力）	制度の執行に関する能力（調査力）
初 級	国際課税の基本的フレームワークとともに、条約・法令・通達の具体的条文と関連付けて自国の国際課税制度を理解できる	財・サービス・金融等の基本的な国際取引に係る諸制度を理解し、個別の具体的な取引について課税関係（要件事実と適用法令）を適切に判断できる
中 級	OECDモデル条約等の条文およびその趣旨や諸外国の国際課税制度と比較して自国の国際課税制度の特徴を正確に把握できる	複雑な国際取引や親子会社間・本支店間等の関係者間の国際取引を正確に把握し、個別の具体的な取引について課税関係を適切に判断できる
上 級	流動的な国際的課税環境の下で自国の制度の問題点をタイムリーかつ的確に把握し、適宜実情に応じた有用・妥当な税制改正案を提言できる	国際取引の中から高度に複雑な国際的租税回避スキームを正確に抽出・把握し、個別の具体的な取引について課税関係を適切に判断できる

「知識力」・「調査力」の向上のためそれぞれ理論中心の研修と具体的調査事例を題材としたワークショップを組み合わせることで、参加者の「問題解決能力の強化」、「税務調査能力の強化」を図った。

(1) 問題解決能力の強化

我が国の国際課税の枠組みは下図のとおりとなっている。

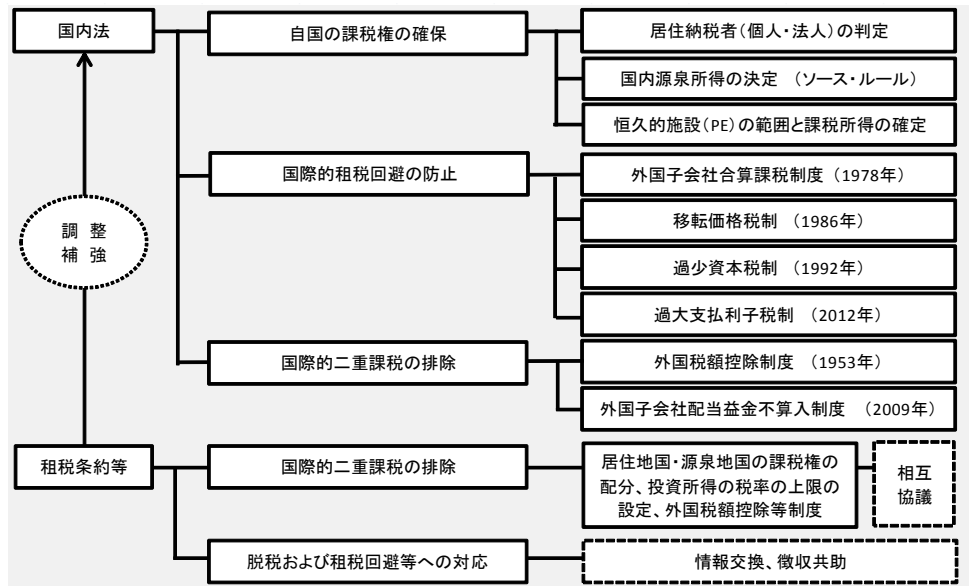


図1 我が国の国際課税の枠組み

研修では基本的にこの枠組みを用いて、次の5段階で自国の国際課税システムの問題解決能力の強化を図った。

- STEP 1 国際課税の基礎知識を修得させる。
- STEP 2 国際課税のあるべきシステムを制度面・執行面の両面から考察させる。
- STEP 3 自国の国際課税システムの現状を分析・把握させる。

STEP 4 自国の国際課税システムの問題点を抽出させる。

STEP 5 抽出された自国の国際課税システムの問題点の解決策を検討・提起させる。

## (2) 税務調査能力の強化

適正な課税を執行するためには、各税務調査官の法的三段論法の思考プロセスを正確に機能させる必要がある。ワークショップでは、モンゴル国で発生した国際課税調査事案を題材として、参加者間でそれをプレゼンテーションおよび討議をさせることで、事案の事実を正確に把握・評価できているか、あてはめる法令・通達を正確に選択できているか、それらの解釈が合理的になされているか、導き出された結論が妥当なものになっているかを相互に検証させ、国際課税面における法的思考能力の醸成による税務調査能力の強化を図った。

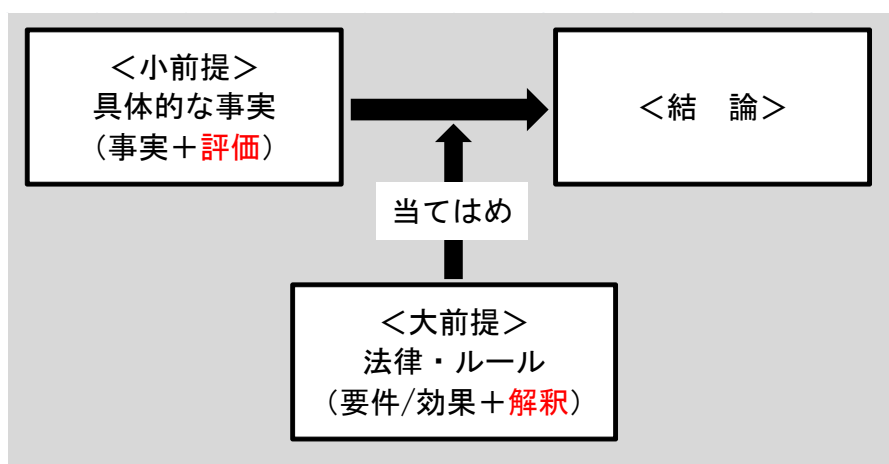


図2 法的三段論法の概念図

なお、コア職員以外の一般職員についても、GDT 内で中長期的に国際課税業務に従事できる人材の確保・能力の底上げが必要であるとの観点から、特に外国法人調査を担当する税務職員を対象に、コア職員をメイン講師として国際課税の基礎知識を修得させるための研修を幅広く実施することとした。これは同時に、GDT 内で自律的に国際課税要員を要請できるプログラム作りを促進させることもねらいとしている。

また、特定のテーマについて、日本国税庁の職員の派遣による研修を実施することとした。我が国の現職税務職員から直接先進的で実務的な情報を享受でき、さらに租税条約がまだ締結されていないモンゴル国と我が国の税務当局間の人的交流を図る好機となると考えられるからである。

### 5.2.2 実施計画と実績

人材育成（研修）の実実施計画・実績は以下のとおりである。述べ 464 人の職員に対してほ



ぼ予定どおり実施ができ、アンケート等の調査結果から、いずれも目的に即して非常に効果の高い研修となったことが確認できた。

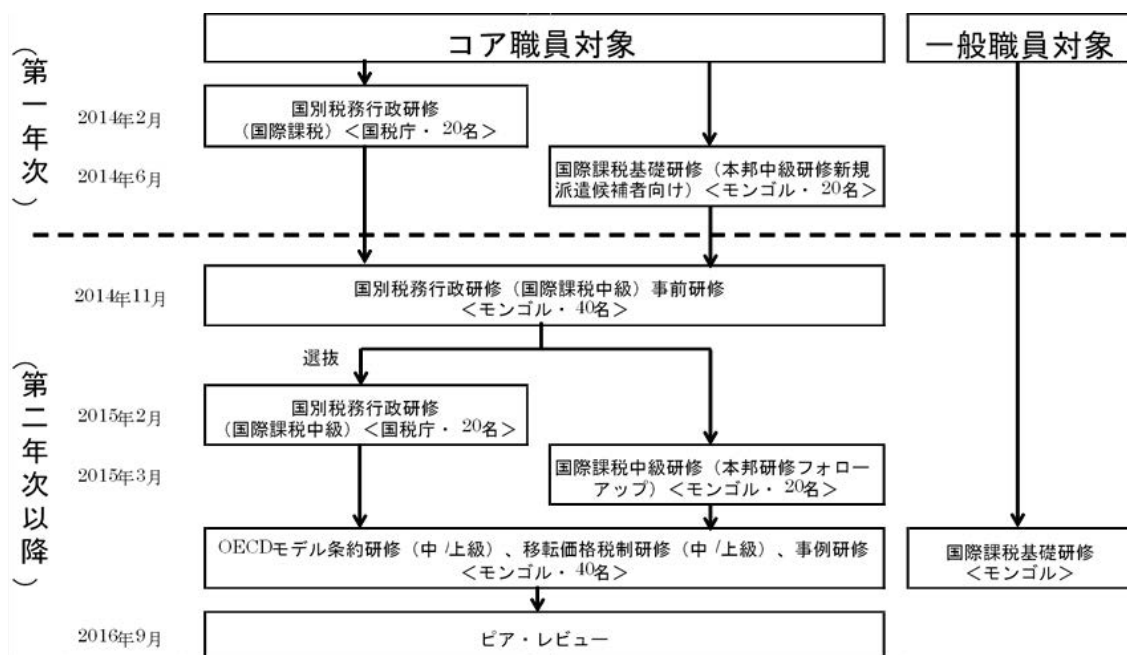


図3 人材育成実施計画

表2 人材育成 (研修) 実施実績

No.	研修名	時期	場所	講師	参加人数
1	本邦研修① 「国際課税初級」	2014.02.16-03.01	日 JICA TIC	日本国税庁 税務大学校職員	22
2	国税庁幹部向け国際課税研修	2014.04.09-04.11	蒙 国税庁	JICA専門家	27
3	日本国税庁職員派遣研修① 「情報交換」	2014.05.19-05.21	蒙 国税庁	日本国税庁 税務大学校職員	40
4	コア職員研修① (初級・フォローアップ)	2014.06.25-07.04	蒙 国税庁	JICA専門家	21
5	コア職員研修② (本邦派遣プレ研修)	2014.11.17-11.28	蒙 国税庁	JICA専門家	40
6	本邦研修② 「国際課税中級」	2015.02.16-02.27	日 JICA TIC	日本国税庁 税務大学校職員	21
7	コア職員研修③ (中級・フォローアップ)	2015.04.06-04.10	蒙 国税庁	JICA専門家	28
8	一般職員研修①	2015.08.17-08.21	蒙 国税庁	研修センター講師 JICA専門家	48
9	コア職員研修④ 「OECD&UNモデル租税条約」	2016.02.29-03.04	蒙 ウランバートル 首都税関局	JICA専門家	35
10	一般職員研修②	2016.03.07-03.11	蒙 Bayanzurkh区 税務署	研修センター講師 JICA専門家	50
11	日本国税庁職員派遣研修② 「海外取引調査法」	2016.06.21-06.23	蒙 関税・国税庁	日本国税庁 税務大学校職員	53
12	一般職員研修③	2016.09.19-09.23 (予定)	蒙 国税庁	研修センター講師 JICA専門家	50
13	コア職員ピアレビュー	2016.09.27 (予定)	蒙 国税庁	JICA専門家	29

### 5.2.3 研修の内容

#### (1) コア職員

初級においては、国際課税の基礎概念およびルール（「居住者・非居住者」、「ソースルール」、「恒久的施設（PE: Permanent Establishment）」、「国際的租税回避防止ルール（タックスヘイブン対策税制、移転価格税制、過大資本税制、過大支払利子税制）」、「国際的三重課税排除ルール（外国税額控除方式、国外所得免除方式）」、「租税条約」）を修得させた。

中級においては特にモンゴル国にとって喫緊の課題になると想定される「移転価格税制」・「租税条約」の2つのテーマについて、ケーススタディ等を通じてさらに高度な知識の修得を図るとともに、ワークショップ形式で自国の国際課税制度の現状と問題点の分析や事例研究による討議等を行わせることによって、知識の応用力・実践力の醸成に努めた。

#### (2) 一般職員研修

コア職員の「初級」研修に準じたカリキュラムにより、国際課税の基礎知識の修得を図った。ただし、GDT 自身による将来の自律的な研修プログラムの構築促進を念頭に、研修の過半数の科目の講師は JICA 専門家ではなく、研修センター職員（コア職員の中から選抜された者）に努めさせた。

#### (3) その他

モンゴル国税庁側の要請に基づき、日本国国税庁（税務大学校）職員を招聘してアド・ホックなテーマ（「情報交換」、「海外取引調査法」）で研修を実施した。

### 5.2.4 今後の課題

本プロジェクト進行中の 2015 年 9 月、多国籍企業の海外取引を利用した BEPS（Base Erosion and Profit Shifting）と呼ばれる租税回避行動に対抗するため、2012 年 6 月に開始されていた OECD/G20・BEPS プロジェクトの最終報告書が公表され、今後同報告書で提言されたパッケージを、開発途上国を含むすべての国が履行することが奨励された。

今後国内外の国際課税ルールは、この BEPS パッケージを軸に構築されることが明白であり、モンゴル国においても以下に掲げるような施策を通じてこの趨勢に対応できる人材の育成が急務である。

#### (1) さらにハイレベルの職員の育成

今プロジェクトでは日本国国税庁との協働により、コア職員の国際課税取組能力を中級レベルにまで向上させることができたと考える。今後さらにレベルを上げ、BEPS を含むあらゆる国際課税問題に対応可能な上級レベルの職員の育成を図っていく必要がある。

#### (2) コア職員のフォローアップ

研修等により知識と技能を取得した職員の活用が有効に図られることが保証されなけれ

ばならない。これらの職員が国際課税と無関係のセクションに異動になったり、民間部門に流出したりするのは資源のロスであり、このようなリスクに対応するための措置を GDT およびプロジェクトが協働して検討する必要がある。

### (3) 国際課税教育のすそ野の拡大

今後見込まれる急速で複雑な国際課税環境の変化に対応するためには、制度・組織・個人のトータルでの能力強化が求められる。中長期的視点に立つとき、ごく一部の職員による対応力では不十分であり、国際課税教育の対象を拡大し、将来的な国際課税要員の確保を図る必要がある。具体策として、一般職員研修を当局の人事戦略とリンクさせ、定期的な研修として組織内での定着を検討する必要がある。

## 5.3 徴収

### 5.3.1 まえがき

本プロジェクトの目標は、「催告センターの設置及び徴収業務の改善により、徴収コストが削減され、滞納の整理がされる。」である。これらの目標を達成するため、①まずもってモンゴル国の租税滞納状況を分析し滞納整理を促進する必要性を見極めた上で、②徴収業務の改善関係においては、滞納整理業務の現状と問題点を分析して改善を提言するとともに、現行徴収制度の内容を把握して法制度改善を図るための助言を行い、③催告センターの設置関係においては、日本の催告センターに関する資料の提供と催告事務運営等について必要な助言を行ってきたところである。

以下、本プロジェクト期間（2014年1月～2016年10月まで）における取り組みについて総括する。

### 5.3.2 租税滞納状況とそれから見た滞納整理促進の必要性

#### (1) 租税滞納状況の分析

##### 1) 本年度新規徴収決定済額の推移

本年度新規課税額（徴収決定済額）は、2013年に27,560億tgと増加したが、翌年には増加前の水準に戻り、2015年は再び24,120億tgに増加してきている。

##### 2) 新規課税分と過年度分の整理状況

新規分収納額及び新規分滞納整理済額は、徴収決定額に連動している傾向にあるが、2015年度は伸びが鈍化している。過年度分の整理済額は、2013年、4,109億tg、2014年、3,992億tgであったが、2015年は、4,942億tgと前年比158.7%と増加している。

##### 3) 滞納残高の推移

滞納残高は、年々増加してきており、2013年、2014年は、4,500億tg前後に抑えられていたが、2015年は、6,950億tgと前年対比158.5%と急激に増加している。

## (租税滞納状況)

(単位：10億tg、%)

区 分	年 度			
	2012年	2013年	2014年	2015年
<b>(本年度分)</b>				
A 新規分課税額	2103.4	2756.0	2229.8	2412.0
B 新規分収納額及び滞納整理済額	1716.9	2465.4	2003.4	2064.7
(B÷A) (新規分収納整理割合)	81.6	89.5	89.9	85.6
C (A-B) 新規分滞納残高	386.5	290.6	226.4	347.3
(C÷A) (新規滞納発生割合)	(18.4)	(10.5)	(10.1)	(14.4)
<b>(過年度分)</b>				
① (前年度末残高) 過年度分繰越額	469.8	572.7	611.4	841.9
② 過年度分整理済額	330.6	410.9	399.2	494.2
(②÷①) (過年度分整理割合)	(70.4)	(71.7)	(65.3)	(58.7)
③ (①-②) 過年度分滞納残高	139.2	161.8	212.2	347.7
<b>(本年度分・過年度分合計)</b>				
A+① 本年度分・過年度分徴収決定済額	2573.2	3328.7	2841.2	3253.9
B+② 収納額及び滞納整理済額 (B+②) ÷ (A+①) (整理割合)	2047.5 (79.6)	2876.3 (86.4)	2402.6 (84.6)	2558.9 (78.6)
C+③ (次期繰越額) 滞納残高	<79.6 525.7	<86.1 452.4	<96.9 438.6	<158.5 695.0

## (2) 租税滞納状況から見た滞納整理促進の必要性について

租税滞納状況をみると、その滞納税額は、徴収すべきとされた徴収決定税額（本年度分新規課税額＋過年度分繰越滞納額）の21.4%を占めている。

租税が国の存立の財政的裏付であり、租税徴収の確保が国の活動の基礎をなすものであるという見地から、経済の膨張により増大する財政需要を賄い、また、租税の公平を実現していくためにも、滞納整理事務執行の改善を図るとともに、法制度をより強固にして滞納となった租税を徴収していく必要がある。

### 5.3.3 滞納整理事務執行の現状と改善のための提言

#### (1) 徴収部門の執行体制の問題とそれについての提言

署の徴収部門においては、(2014年12月までは)課税業務(申告しようよう、申告書受理、申告事績の入力)と徴収業務の両方を担当し、どちらかといえば課税業務への従事が優先され、事務量も重点的に投下されていたために滞納整理事務がなおざりとなっている状況にあった。

##### 《提言》

徴収事務への投下事務量を十分に確保し、また、職員の専門性を高めるため、課税業務と徴収業務の分離が不可欠である。このため、今後、運営体制の見直しが行われる際には、課税業務と徴収業務の完全分離を図って、徴収職員が滞納整理に集中できる体制に改善するよう提言した。

##### 《提言の結果》

その後、運営体制の見直しが行われ、2015年1月から①徴税管理方策局で行っていた申告書のしようよう業務、申告書の受理からその審理までの業務を納税者サービス局に移管する。②リスクマネジメント局で行っていた歳入管理業務及び還付事務を徴税管理方策局に移管する。③納税者サービス局で行っていた源泉徴収業務を徴税管理方策局に移管されることになった。

#### (2) 徴収事務の実施状況関係

##### 1) 通知書の送達方法の問題とそれについての提言

モンゴル国の徴収業務において比較的多くの事務量を費やしている業務は、納付通知書の送達事務である。モンゴル国においては、郵便による送達がほとんど利用されていないが、その背景には、①銀行口座強制振替手続を行う際に、滞納者の納付通知書受領サインを必要とする事務手続きを定めていたため、納付通知書は、交付送達が原則とされていたという事情があったこと、②国内の郵便事情が悪いこと、③滞納者が不在あるいは転居している場合が多いこと、また、その情報が迅速に納税者情報管理システムに反映されないこと、④住所の登録局との関係においても正確な現住所地の把握が困難であることなどがある。

その結果、日本においては補充的に行われている交付送達が、モンゴル国においては原則的な書類の送達方法となっており、郵便による送達に比べて多くの事務量を要しているほか、住所地に赴いても不在あるいは転居済みで書類の送達ができないケースが多いなど、事務処理の進展を阻む大きな要因となっていた。

《提言》

日本における書類の送達規定（国税通則法第12条）を参考にして、モンゴル国における書類の送達の現状と問題点、対応策、法律上の手当て等をまとめた「通知書の送達方法を郵便送達とする見直しと改善」を提言した。

《提言の結果》

2016年から送達方法を郵送によることとする見直しが行われ、中央郵便局と契約し、通知書発付先のデータを中央郵便局に送信することで中央郵便局から滞納者に通知書を発送するシステムを構築し、通知書の送達漏れを防止するとともに、所在不明等で返戻された書類の納税者情報については、「TRIPS」（Total revenue information processing system）システム（納税者管理情報修正システム）の活用により住所、居所の変更、代表取締役の交替等、納税者情報を迅速に修正することが可能となるなど、通知書が確実に送達される環境が整えられた。

## 2) 専門性の高い事務の処理や内部事務の処理に係る問題とそれについての提言

資産の差押えや裁判所への申立て手続（申立て書類の作成、証拠資料の収集など）等の専門性の高い事務をはじめ、業務管理資料の基となる基礎資料の収集、作成、滞納処分状況の記録の記載事務等の内部事務に多くの事務量を要している状況がある。

《提言》

徴収職員が専門性の高い事務処理手続に習熟できていないため、事務処理が効率的に行われていないと考えられることから、その改善のため、「滞納整理の手引き（マニュアル）」を作成して徴収職員に十分研修を行う必要がある旨提言した。また、内部事務については、「内部事務処理要領」を作成し、あるいは「徴収事務実施の手引き（マニュアル）」を作成するなどの必要がある旨を提言した。

\*滞納整理の手続について徴収職員の研修教材に役立つ徴収職員向けの「滞納処分の手引き（マニュアル）」をGDT側と共同で作成した。

## 3) 業務管理に係る問題とそれについての提言

徴収事務における管理者は、徴収業務を効率よく推進していくためには効率的な事務量の配分、重点施策等の選定などの的確な業務管理が不可欠であるところ、モンゴル国においては、業務を管理するのに必要な管理資料が十分整備されていない状況にあった。

《提言》

事務運営の円滑化に資するため、日本における徴収事務において使用されている業務管理資料（個別事案進行表、事務計画の策定、実績検討に役立つ検討表、事務従事状況表等）をモンゴル語に翻訳して提供した。

#### 4) 大口、処理困難事案の処理に関する問題とそれについての提言

大口、処理困難事案を処理する特別な部門や専担者が置かれていないことから、徴収職員だけではこのような事案の整理が難しく、滞納の累積化、長期化、更なる処理困難化が進み、放置されているのではないかという問題が生じている。

《提言》

このような事案を処理する専担部門あるいは、徴収技能に熟達した専門職員を設置して担当させる必要がある旨提言した。

#### 5.3.4 制度整備（法制度）関係

##### (1) 法制度における課題について

モンゴル国における租税の徴収手続は、単独の法律として完結的に規定されたものではなく、各税法に共通する事項を定めた通則的な法律、「モンゴル国法律一般税法」（以下「一般税法」という。）の第8章に「納付期限内に納付されない滞納税」の徴収手続として一連の規定を置くだけで、より具体的な徴収手続は、「2008年10月28日付 GDT 長官通達 220号」によって運用規則が定められている（現行の一般税法における徴収手続の主な規定及び長官通達は、別紙のとおりである）。

現行の法制度では、完全な自力執行権は認められておらず、最終的に裁判所の手を借りなければならぬ構造になっており、これによって滞納整理を進めていくには将来的に限界がある。以下、法制度の課題について検討する。

1) 一般税法の第63条及び第64条の規定は、滞納税額につき滞納者の銀行口座あるいは滞納者の財産、給与、その他の収入金等から強制的に徴収することができると規定しているが、滞納者が税務機関から送付された納税通知書にサインを拒否した場合には、銀行及び第三債務者が強制的な徴収を拒むケースがある。

このように、強制的徴収が実現できないことがあり、納付通知書が督促の法的強制力、あるいはその実効性が伴っていない現状にある。

また、同法第67条、68条の規定は、徴収職員は裁判所への申立手続の前段で滞納者の一定の財産について差し押さえることができるものの、これは、実質的にその後裁判所が本執行に移して強制競売するための保全措置（仮差押）を講じるものに過ぎず、本来の意味での徴収職員の自力執行権は不完全なものとなっている。

2) 一般税法第65条の規定は、滞納税は、銀行口座または給与等からの強制徴収に際して裁判所の執行権と競合した場合には、税の徴収手続は、常に裁判所の執行権に劣後するとしており、一般私債権との関係では優先徴収権は認められておらず同順位の関係にあり、税の収納が滞る要因となる。

3) 銀行口座強制振替、滞納者の財産、給与その他の収入金からの強制振込、担保徴収の手続を取っても徴収できない場合には、最後の手段として裁判申立てをすることになるが、裁判申立ての基準が原則として滞納額 3,000 万 t 以上の事案に限られており、基準に達し

ない事案は長期滞納事案となる傾向にある。しかも、裁判機関の処理にも相当長期間を要しており、滞納残高の 20% 近くを裁判機関が所掌している現状にある。

4) 納税通知書の発付期限の定めがないこと、納付通知書の郵送に必要な費用が不足しているなどの原因で納税通知書の発付時期が各税務署の事務運営及び事情に左右され、恣意的になりやすく徴収手続の公平性が保たれていない。(ちなみに、日本の場合は、法律で納期限から 50 日以内に督促状を発付することが規定されており、手続きの公平性が保たれている。)

5) 一般税法第 57 条の規定は、滞納者の申請に基づき、通常の納付期限から 60 日間(ただし 1 回限り)の納期限の延長を認めているが、猶予期間の利子が高いため実質的に利用されることは少なく、また、これ以外に納税の猶予の制度がない。

6) 徴収権の消滅時効の規定(日本では法定納期限から 5 年で徴収権が消滅する)及び滞納処分の執行停止制度(執行の停止が 3 年間継続した場合は納税義務が消滅する)がないことから、前述したとおり、滞納処分を進めても差し押さえるべき財産が全くない滞納者や納付資力を喪失して回復の見込みがない滞納者など、徴収不能の状況にある不良債権化した滞納事案が累積している。

## (2) 法制度についての提言

現行法制度について、「滞納整理改善(法制度面)について」により、以下のとおり提言した。併せて、提言の理解の一助とするため、①日本において施行されている「国税徴収法」全文のモンゴル語翻訳文、②日本における税務大学校で使用している「国税徴収法」の教材の全文モンゴル語翻訳文を提供した。

《提言》

### 1) 自力執行権の付与

一般税法によれば、銀行等の第三債務者、あるいは滞納者から提供を受けた担保財産あるいは給与等第三債務者から強制的に徴収できる規定はあるものの、最終的に裁判所の手を借りなければ徴収確保ができない制度となっており、徴収職員に完全な自力執行権が認められていない。そのため、この租税を確実に確保するには、徴収職員に完全な自力執行権を付与する規定を一般税法に織り込むことが必要である。

### 2) 租税優先権の付与

一般税法によれば、租税債権は一般民事債権と同列であり、租税の優先権は認められていない。日本の場合は、原則、租税は、納税者の総財産についてすべての公租公課その他の債権に優先し、また、一般債権者が抵当権、質権等の優先権を設定した場合には、その設定日と滞納税の法定納期限との先後で優先権を決定する規定があり、また、差押えと裁判所の執行権とが競合した場合には、これを調整する法律が設けられている。モンゴル国においても、他の私債権との調整を図りながら、租税優先権の導入を図っていく必要がある。



プロジェクトでは租税優先権の論理的根拠と日本の租税優先権制度の具体的内容の解説とアメリカ、西欧諸国等諸外国における租税優先権の制度を紹介した。

### 3) 猶予制度の導入

納税の緩和措置は、納付期限から 60 日間（1 回限り）納付期限の延長が認められているだけであり、延長期限が過ぎても事実上何の法的手続をとらないまま放置されている。

災害や病気などのために納税資金が不足し納付できない場合、あるいは、検査により数年分遡及して課税されたため納税資金が不足し納付できない場合、及び納税に誠意があるが滞納者の全財産を換価しても納付できない場合などには、納付を猶予する制度の創設が必要である。プロジェクトでは日本における猶予制度について、現行の条文内容などを紹介した。

### 4) 第二次納税義務の制度の導入

最近の処理困難事案の中には、資産を隠ぺいし、財産を滞納者の関係者に移し替える事案、また、資産を無償又は低額で譲渡するなどして滞納処分を免れるケースなどが増えている。

そこで、滞納者の財産につき滞納処分を執行してもなお徴収すべき滞納税に不足すると認められる場合において、滞納者の財産を無償で譲り受けた等一定の要件を満たす特定の第三者に対して補充的に納税義務を負わせる制度の創設が必要である。

### 5) 繰上請求、繰上保全差押え

一般税法によれば、納期限（納付通知書の到達日から 10 日）までに徴収が見込まれない場合、納期限を短くする規定（第 54 条の 2）はあるが、滞納法人の倒産や滞納者の出国などにより徴収できない事案も散見される。

そこで、納税者の資力の状況により、納期限まで待つては徴収が図れないときは、納税者の期限の利益を奪って徴収の確保を図る必要がある。また、納税者が徴収を免れるおそれがある場合には、その税額の確定前においても、確定すると見込まれる税額のうち徴収不足が見込まれる金額を決定し、その金額を限度としてその者の財産を直ちに差し押さえる「繰上保全差押え」の創設が必要である。

### 6) 納税義務消滅、執行停止制度の導入

納税義務の時効消滅制度は、1992 年の一般税法の改正で、第 13 条の 2 の規定が削除され廃止されている。また、執行停止制度は、自力執行制度の下、納税の緩和制度として機能すると同時に、納税義務の存する限りその管理及び徴収に多くの時間、手間を要するため、コストパフォーマンスを考慮した徴収効率の向上の制度として機能するものである。不良債権化した滞納事案の累積化を解消するため、モンゴル国においても自力執行制度の導入の際にはこのような制度が必要である。

## (3) 一般税法改正案作成についての提言と国会審議関係

GDT は、上記の「法制度についての提言」を受けて、一般税法を改正する検討を開始し

た。そして、従来の銀行口座、給与等からの強制徴収の規定を残したまま、税務当局が自力で迅速に滞納者の財産を差押え、公売できる規定を盛り込み、法施行後は、税務機関が自ら差押え、換価、配当を行い、裁判所の手を借りることなく滞納税の収納を図ることを可能とする内容の一般税法改正案を作成して、税務行政・協力局を経由して、財務省に提出した。

その後、2016年2月、一般税法改正案として国会に上程され、審議が開始されたが、2016年6月現在、国会に上程されたまま総選挙を迎え、審議未了となっている。

#### 《提言》

一般税法改正案の作成に関して、2015年2月、一般税法の「改正要望案」を提言し、また、同年8月、自力執行権を盛り込んだ「一般税法改正案についての意見」を提言した。さらには、改正案が成立してそれを執行するに当たり必要となる庁内通達、規則の改正作業、職員研修、広報等についてのロードマップを作成して提供した。

(別紙)

一般税法における徴収手続の主な規定及び長官通達

〈一般税法第 8 章、第 61 条から第 70 条〉

- ・ 一般税法第 61 条：滞納税の定義
- ・ 同法第 62 条：滞納税の徴収の順番
- ・ 同法第 63 条：銀行口座からの滞納税の強制引落としの手続
- ・ 同法第 64 条、65 条は、滞納者の資産、給与その他の収入からの徴収及びその手続
- ・ 同法第 66 条：滞納者の財産の公売手続
- ・ 同法第 67、68 条：差押え及びその手続
- ・ 同法第 69 条：担保徴取とその売却手続、また、差押え、担保徴取禁止財産
- ・ 同法第 70 条：裁判所への訴訟提起

なお、その他特に徴収手続に係る条文として、同法第 33 条の書類の作成、送達及び同法第 54 条の納税通知書の送付の規定がある。

〈主な運用通達、規則〉

(「2008 年 10 月 28 日付国税庁長官通達 220 号」)

- ① 納税者の資産、給与及びその他の所得（収入）から徴収する手続
- ② 財産の公売手続
- ③ 現況調査（搜索）の手続
- ④ 財産差押え（実質的には仮差押え）の手続
- ⑤ 裁判所への訴訟申立て（競売申立て）

(「2009 年 5 月 12 日付国税庁長官命令」154 号)

- ① 納付通知書（督促状）の作成、送付の手続
- ② 銀行口座からの強制引落としの手続

### 5.3.5 催告センターの設置関係

#### (1) 設置計画の概要とそれに関する助言

2014年4月、徴収方策局長以下9名が、「本邦研修」において、東京国税局集中電話催告センターを視察し、日本における電話催告センターの概要、電話催告のシステムとその運用状況等について説明を受けた。

これを参考として策定された設置計画は、新規滞納者（件数・税額）の圧縮を目的として、納期限経過後の滞納事案を対象に、首都圏税務署等の所掌分について催告し、その業務は8人体制で行うとするものであった。

《助言》

##### ①（催告効果を高める環境整備について）

2014年9月、旧GDT内に催告センター導入のためのプロジェクトチームが設けられ、意見交換を実施、モンゴル国側が作成した催告システムのフローチャートに対して意見を述べ、意見交換を行うとともに、催告効果を高めるための環境整備（催告センターの組織規程の要否、納税通知書の送達方法と通知書発付直後ものを対象とすべきこと、催告センターの事案の所掌期間、対象署の範囲の拡大、催告対象税額等）について、書面により助言を行った。

##### ②（システムの機能要件について）

日本におけるシステムに整備されている各種機能について、書面により助言を行った。

##### ③（催告文書等の様式について）

日本における集中電話催告センターの現状について情報提供を行うとともに、システムにより送付される「催告文書」「納付計画書」の様式を日本国国税庁から取り寄せ提供した。

#### (2) 機材購入、システム開発状況等運用開始までの経緯とそれに関する助言

2015年9月、指名競争入札により、落札者が決定、同年12月完成を目途にシステム開発に着手した。また、12月までにパソコン、サーバー及び周辺機材を購入した。

催告センターは、当初、徴税管理方策局内に（主任検査官1名、検査官7名）設置予定であったが、2016年1月、組織再編（国税庁と関税庁との合併）があり、税関・国税庁の納税者支援局の外局としてコールセンター内に設置されることとなり、同年3月、試験的に運用を開始した。

《助言》

##### ①（入札仕様書などの資料提供について）

入札実施、落札者決定、機材購入、システム開発システムに必要な機能要件の解説及び入札に必要な仕様書（案）など入札準備に係る資料を提供した。

##### ②（従事員に対する研修の実施について）

催告センターの稼働に向けて、2015年12月、2016年3月の2度にわたり、日本における電話催告センターの概要及び催告業務を行う際の心構えなどについて研修を実施した。

### (3) 催告業務の現状とそれに関する助言

#### 1) 催告の方式、対象者等とそれに対する助言

① 現行の催告方式は、本来予定していた自動電話催告システム（以下「催告システム」という。）を使わず、リスクマネジメント局から提供を受けた申告データを基に TAXACT（計算残高 Excel）プログラムを使用し、手動で電話催告を行う方法で実施されている。

② 催告対象者については、法人の滞納者（主として、未納者（申告書を提出しているが法定納期限までに納付していない納税者）で、税目は主として、法人所得税及び付加価値税、対象税額は、未納額 300 万（一部 500 万）トゥグルグ（以下、「tg」と表示する）以下のものを対象としている。

③ 催告対象署は、2016 年 3 月下旬から Sukhbaatar（スフバートル）区税務署を手始めに、2016 年 5 月以降は、対象署を Songino khairkhan（ソングノハイルハン）区税務署、Khan-Uul（ハーンウル）区税務署、Bayanzurkh（バヤンズルフ）区税務署に拡大し、その後、同年 6 月からは Bayangol（バヤンゴル）区税務署、Chingeltei（チンゲルティ）区税務署、さらに Khovd（ホブド）県税務署を対象とするなど対象署を徐々に拡大してきている。

④ 従事員は、スーパーバイザー（以下「SV」という。）の主任検査官 1 名、OP である検査官 7 名で構成されており、日々の催告業務のほか、OP 全員が毎週金曜日を作業日としてデータの取り込み、催告結果の集計作業等を行っている。

《助言》

#### ①（催告システムを早期稼働することについて）

催告システムは、自動架電機能、催告対象者の抽出機能、催告結果の集計機能（統計機能）、交渉記録管理機能、データ処理機能等を有している。この催告システムを利用することで、架電業務、データ抽出、交渉結果の入力、結果の集計作業等相当の事務量の圧縮を図ることができ、効率的な催告業務が可能となる。

したがって、効率的な催告業務が行えるよう出来るだけ早期に催告システムを稼働させる必要がある旨を助言した。

#### ②（催告の対象を納付通知書が発付された事案とすることについて）

催告センターができるだけ高い催告効果を上げるためには、納付通知（督促）と連動させて、納付通知書（督促状）発付直後のものを催告対象にすることが重要であることはこれまで提言してきたところである。これに呼応して、新規発生滞納について、中央郵便局を利用した納付通知書の発付システムが稼働しつつあるが、このシステムが順調に機能し、将来的に納付通知書の発付が全国的に統一かつ平準化されれば、納付通知書が発付された事案を中心に催告を行うことを検討すべきである旨を助言した。

#### 2) 催告の実施状況と改善のための助言

2016 年 3 月 30 日から同年 6 月 30 日までの 3 か月間に行った催告の実施状況は、別紙のとおりである。

その結果をみると、Sukhbaatar（スフバートル）区税務署所掌分の催告においては、納付

確認及び納付誓約できた割合は、過年度滞納を含む場合は 38%前後であるが、本年度未納分のみの場合は 42%あまりとその割合が 5%程度高くなっている。また、催告を実施したすべての税務署分においては、半分以上の事案がデータの不正確、又は不応答で接触を図ることができなかったという結果になっている。

《助言》

#### ①（催告対象者について）

運用開始後、試行的に催告対象者を 3 グループ（過年度分のみの滞納者、本年分のみの未納者及びその両方の滞納者）に分けて催告を行ったところであるが、その結果からも明らかなおり、過年度分のある滞納者は、もともと納税意識が希薄で滞納慣れしており、催告の効果は限定的であり、また、すでに特定の税務署でも電話催告を実施していることから、催告の対象者とすべきではないと考える。

また、現在行っている納付通知（督促）前の未納者に対する電話催告は、滞納整理のための催告としては問題がなくもないが、滞納発生を抑止するという点では意義があると考えられる。この場合には、少額ではなく大口から順次件数を絞って行うことが効果的であると考える。

さらに、納付通知（督促）前の少額未納者に対して催告を行うのであれば、件数処理を図る目的として、時期を定めて（例えば、四半期ごと）定期的に集中して実施するのが効果的であると考える。

以上のとおり催告対象者の選定については、催告効果、OP の処理能力（現在の OP の 1 日の催告件数は 44~60 件、7 名で月間 800~900 件程度である。）、収納率の向上の観点から、催告システムの本格稼働に合わせて、どの税目について、どの滞納者を催告対象とすべきかを総合的に勘案して決める必要がある旨を助言した。

#### ②（従事事務の状況について）

運用開始後 3 か月余りで健康の不調や業務の不適正を訴える OP が現れるなど、OP の健康状態に若干の不安材料が見受けられる。

これは、催告業務の特殊性と多忙が原因と思われることから、十分な休憩時間、適度なリフレッシュ時間の確保、催告業務を半日単位でローテーションを組むなど健康管理に十分配慮し、また、ストレスが蓄積されない執務環境を醸成する（将来的には、OP の増員（アルバイトの採用）を図ることも検討する）必要がある旨を助言した。

#### ③（返戻事案の処理について）

データが不正確な事案は、不応答を含め催告対象の約 50%近くを占めており、催告の時間と手間が無駄となり催告効果を低下させる大きな要因となっている。できるだけ早期に所轄署に返戻し、以前より迅速に補正できるシステム「TRIPS」（納税者管理情報修正システム）を活用し、迅速かつより正確な情報に修正させることが重要である旨を助言した。

#### ④（受電業務の対応について）

現在、受電業務は、特定の担当者を置かないで受電の都度空いている OP が対応している

ところであるが、回答に手間と時間を要し、また、催告業務が中断されるなど事務効率を低下させる要因となっている。今後は、催告システムを活用するとともに、事務効率やOPの健康管理の側面からも受電専担者の設置、又はローテーションを組むなどして対応することも検討する必要がある旨を助言した。

## (別紙)

## 催告の実施状況

1. Sukhbaatar(スフバートル)区税務署が所掌する法人の滞納者の中から、4967件(45億6500万tg)を対象として、過年度分のみ滞納者、本年度分のみ未納者及びその両方の滞納者(「併有滞納」という。)に分けて、催告を実施した。催告結果は、下表の通りである。

(単位：件、%)

区分	催告 総数	納付確認		納付誓約		署返戻			
		件 数	構 成 比	件 数	構 成 比	不正 確	構 成 比	不 応 答	構 成 比
過年度分	346	76	22.0	58	16.8	109	31.5	103	29.7
本年度分	71	21	29.6	9	12.7	37	52.1	4	5.6
併有滞納	3854	737	19.1	727	18.9	499	12.9	1891	49.1

(注) 件数は、6月20日現在の催告件数を示す。

2. 2016年5月から Bayanzurkh(バヤンズルフ)区税務署の未納額、滞納額のある滞納者、同様に、Songino khairkhan(ソングノハイルハン)区税務署、Khan-Uul(ハーンウル)区税務署、Bayangol(バヤンゴル)区税務署、Khovd(ホブド)県税務署、Chingeltei(チンゲルテ)区税務署の未納者、滞納者を対象に、それぞれ催告を実施した。催告結果は、下表のとおりである。

(単位：件、%)

税務署名	催告 総数	納付確認		納付誓約		署返戻					
		件 数	構 成 比	件 数	構 成 比	不正 確	構 成 比	不 応 答	構 成 比	困 難	構 成 比
バヤンズル	1138	459	40.3	291	25.6	155	13.6	140	12.3	93	8.2
ソングノ	820	326	39.8	166	20.2	89	10.9	147	17.9	92	11.2
ハーンウル	973	273	28.1	199	20.5	105	10.8	247	25.3	149	15.3
バヤンゴル	1230	281	22.9	317	25.8	184	14.9	288	23.4	160	13.0
ホブド	193	13	6.7	39	20.2	62	32.0	56	29.0	23	11.9
チンゲルテ	185	55	29.7	43	23.3	17	9.2	48	25.9	22	11.9

(注) 件数は、6月20日現在の催告件数を示す。



添付資料

**PDM**

## Project Design Matrix (PDM)

Name of the Project: The Project for Enhancing Tax Collection Operation and International Tax Issues of Mongolian Tax Administration /MTA/  
 Target Area: Nation-wide of Mongolia Target Group: Mongolian Tax Administration (MTA) Duration: 3 years

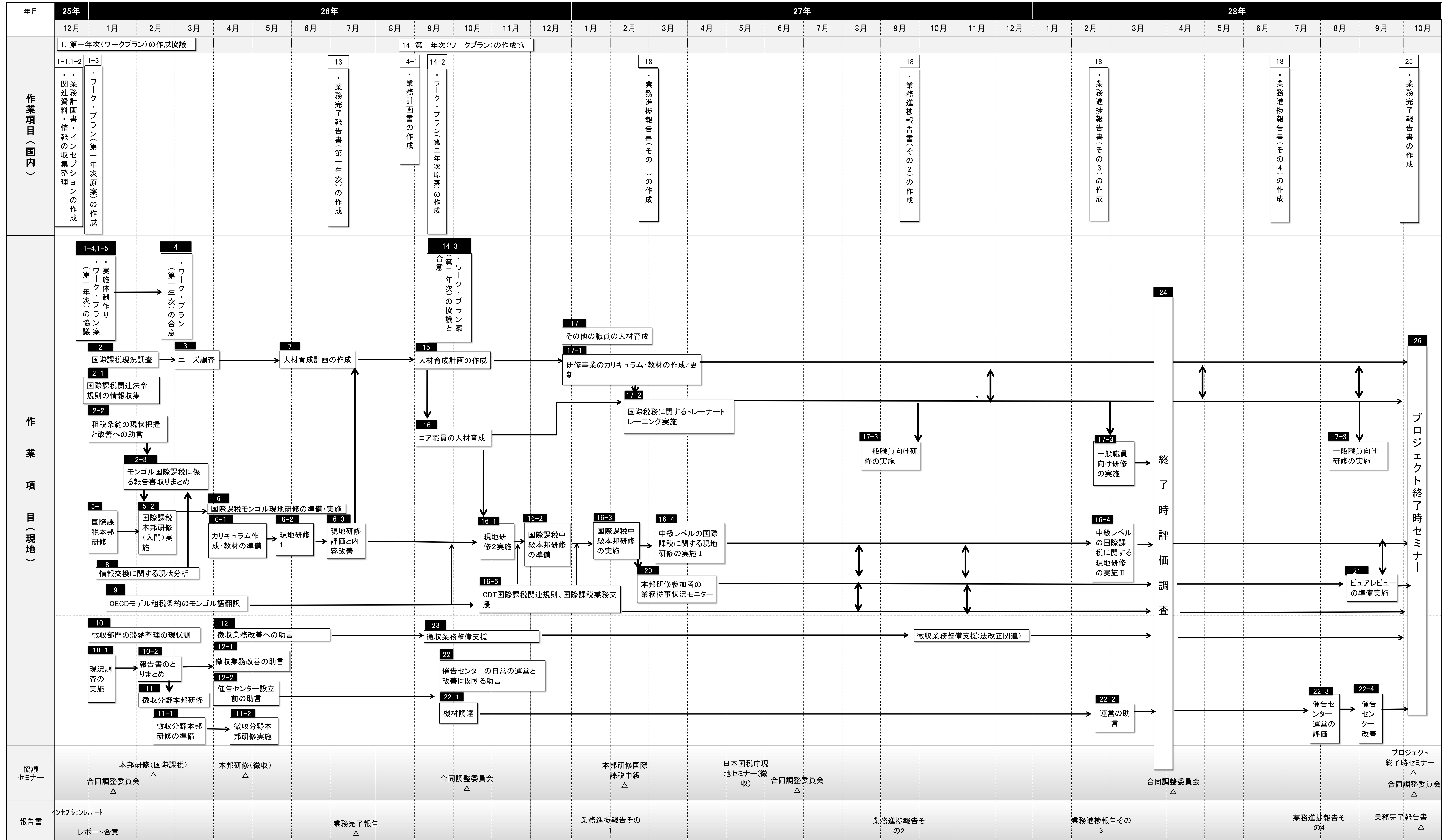
Version 1.1  
 Updated: September, 2013

Narrative Summary	Objectively Verifiable Indicators	Means of Verification	Important Assumption
<b>Overall Goal</b> Fair and appropriate tax administration is enforced in Mongolia.	(1) Enactment of rules and guidelines related to international taxation and tax collection according to the laws (2) Recommendations and drafts of necessary revision of tax codes as a result of the project (3) Overall satisfaction on the tax administration is improved	1-1) Rules and guidelines enacted 1-2) Recommendations and drafts 2-1) Opinion poll on taxation 2-2) Tax penalties and interest paid	• There is no major change in the taxation policy in international transactions
<b>Purpose</b> The capacity of Mongolian Tax Administration (MTA) on international taxation and tax collection are strengthened	(1) Qualified staff members (2 years of job experiences of MTA in minimum, and selected from the members successfully completed the basic courses) assigned to positions requiring the capacity of international taxation and tax collection (2-1) The EOI Unit becomes established and operational (2-2) Agreements with ministries and agencies are executed for collecting fundamental information necessary for EOI (2-3) The list of countries and number of inquiries sent to the EOI Unit (3) Number of international taxation cases found during regular examination (4-1) Number of cases dealt at the Tax Debt Call Center (4-2) Efficiency of tax collection of local tax offices improved	1) Assignment of the trainees, organizational chart 2-1) Organizational chart 2-2) List of agreement and items on EOI with other ministries 2-3) Activity record of the EOI unit 3-1) Record of tax examination (Number of assessment issued from the examiners) 3-2) Number of cases 4) Record of tax collection cost	• There is no significant change in revising and furnishing laws and regulations on taxation of international transactions • taxpayers support the current taxation policy and practices
<b>Output</b> 1. The fundamental knowledge and skills necessary for international taxation are acquired.	(1) The report of the review on laws, regulations and rules of international taxation (2) By making review report, procedures and practices on international tax treaties are clarified  (3) Making report about identified needs of C/P on capacity development for international taxation (4) 20 qualified C/P completed the introductory training in Japan on international taxation. Examples include: • Country Report Presentation • Introduction of NTA, • Lecture and Overview on International Taxation (such as transfer pricing taxation, advance pricing agreement, MAP, EOI, etc.) • Field trip to local tax offices and National Tax College (discussion with tax officials completed the international taxation courses, etc.), and • Discussion on necessary reforms and implication of international taxation and other issues. (5) At least 40 qualified trainees participated the basic training on international taxation. Examples include: • International Taxation covering such subjects as • Fundamental Concept of Taxation, • Tax Treaties (incl. OECD & UN Model Tax Convention), and • Foreign tax credit, thin capitalization rules, rules for foreign subsidy companies, anti-tax heaven (CFC) rules, etc. • Basic of Transfer Pricing (TP) • Advance Pricing Arrangement (APA) • Mutual Agreement Procedure (MAP) • Exchange of Information (EOI)	(1) Review report  (2-1) Review on the international tax treaties (2-2) Recommendations on procedures and practices on the treaties  (3) Baseline survey  (4-1) Participants list (4-2) Record of Training (4-3) Self-assessment/ questionnaire survey (4-4) Report prepared during the training  (5-1) Participants list (5-2) Record of Training (5-3) Self-assessment/ questionnaire survey (5-4) Mini-test regularly carried out (5-5) Final examination at each course	• There is no significant change in budget allocation to GDT
2. The foundation of international taxation is solidified.	(1) The current situation of information management analyzed in a report. (2) The review of "OECD Model Tax Convention on Income and on Capital" into Mongolian Language completed  (3) Human resource development plan for international taxation approved.  (4) Review and revision of the curriculum for international taxation completed (5) Teaching materials and textbooks for international taxation prepared. (6) At least X number of the candidates trainers of the Training Center completed the trainer training on international taxation  (7) Carry out follow-up training and advise for issues on examination on international taxation	(1) Report current situation of information management (2-1) A completed set of translated documents (2-2) The result of the review (vocabulary, interpretation in Mongolian language)  (3) Human resources development plan (targets, population, necessary competency, training methodology, etc.)  (4) A set of curriculum for each target (5) Teaching materials and textbooks (6) Record of training received (name list, courses completed, result of the final exam, etc.)  (7-1) Record of follow-up activities (activity report of experts) (7-2) Self-assessment (7-3) Summary of the discussions at the Peer Review and Training	• There is no major change in organizational change and staffing.
3. Rules and procedures of MTA on tax collection are improved.	(1) Result of the review and analysis of the current collection methods, and other institutional actions. (2) Necessary institutional actions for recovery of taxes in arrears defined  (3) Basic principals, rules and procedures for establishment of the proposed Tax Debt Call Center defined in a manual  (4) The proposed Tax Debt Call Center is inaugurated	(1) Review Report  (2) Description of actions for delinquent taxes (3) Manual  (5) Report submitted by the experts	3. Delinquent taxpayers willing to pay their deferred obligations  3. Mongolian economy enjoys stable growth.
<b>Activities</b> <b>Activities for Output 1 : "The fundamental knowledge and skills necessary for international taxation are acquired"</b> 1-1 Collect information on laws regulation and rules on international taxation of Mongolia. 1-2 Analyze the information (e.g. comparison to those of Japan) and advise necessary revision of domestic statutory instruments for enforcement of effective international taxation. 1-3 Conduct a baseline survey to analyze knowledge and skills of C/P on international taxation. 1-4 Introduce an overview of international taxation. 1-5 Instruct a basic subjects on international taxation.	<b>Inputs</b>		
<b>Activities for Output 2 : " The foundation of international taxation is solidified"</b> 2-1 Analyze and prepare report on MTA's current situation of information management related to taxpayers and activities concerning EOI. 2-2 Introduce basic knowledge and practice of EOI in Japan.  2-3 Translate "OECD Model Tax Convention on Income and on Capital" into Mongolian Language for use at the training. 2-4 Based on the results of 1-4 and 1-5, prepare a human resources development plan for international taxation at GDT.  2-5 Review the existing curriculum and the materials on international taxation at the Training Center referring to the Japanese teaching materials provided by the Project. 2-6 Revise the existing teaching materials (textbooks, etc.) for use at the training center for general tax officer training for MTA. 2-7 Carry out trainers training for TC on international taxation. 2-8 Monitor the activities related to the international taxation of the returned participants from Japan and prepare the peer review 2-9 Follow-up the advanced examiners on international taxation at the peer review 2-10 Provide topical training on the advanced international taxation by NTA tailored to specific subjects requested by GDT.	<b>Inputs from Japan</b>  1. Experts Short-term Experts will be dispatched from National Tax Agency of Japan (NTA), in accordance with the necessity for effective implementation of the Project. JICA Expert Team will be dispatched to input the fundamental knowledge and skills necessary for international taxation.  2. Training in Japan Training in Japan is planned to be implemented during the Project, based on the necessity for effective implementation of the Project. Prospective areas include international taxation and tax collection. (1) International Taxation (maximum 20 trainees* up to 2 weeks* 3 times over the project duration) (2) Tax Collection  3. Machinery and Equipment (1) Machinery and Equipment Equipment necessary for day-to-day operation of the Tax Debt Call Center (2) Other equipment used by the experts	<b>Inputs from Mongolia</b>  1. Counterpart Staff - Project Director: The commissioner of General Department of Taxation - Project Manager: The head of Tax Administration and Cooperation Department, General Department of Taxation - Members of Counterpart (hereinafter referred as "CP")  2. Facility and Equipment - Office of the Project - Meeting/Class rooms for seminars and workshops - Other relevant facilities and equipment  3. Local Cost - Maintenance costs for facility and equipment - Costs for implementing training conducted by the Training Center	establishment of Information Exchange Unit  2-2 There is no major change in GDT's commitment (personnel, budget allocation, etc.) for  3-2 Commitment in tax collection and management of arrearage of taxes.  3-3 Necessary revisions of rules and guidelines are revised in a prompt manner.
<b>Activities for Output 3: "Rules and procedures of MTA on tax collection are improved"</b> 3-1 Analyze the current tax collection issues in Mongolia and prepare a report for presentation during the training in Japan. 3-2 Introduce the measures and the procedures for settling delinquent taxes commonly practiced in Japan. 3-3 Discuss, identify and report effective options for settling delinquent taxes (e.g. investigation of hidden assets, accepting installed payment, a call center to remind missed tax payments, public notice online for auction, etc.) in Mongolia.  3-4 Advise the GDT the basic principals, rules and procedures necessary for establishment of the proposed Tax Debt Call Center to deal with delinquent taxes.  3-5 Advise the GDT on daily operation and continuous capacity development of Tax Debt Call Center and develop capacity.			Pre-condition • Appropriate counterpart personnel with good command of English and knowledge in taxation and accounting are assigned to the project



業務フローチャート

業務フローチャート



## 専門家派遣実績





## 研修実績

## International Taxation

### 1. The 1<sup>st</sup> country focused training

Period: Feb 16 to Mar 1, 2014

<b>Date</b>	<b>Day</b>	<b>Morning (9:30-12:30)</b>	<b>Afternoon (13:30-16:30)</b>
Feb 16	Sun		Arrival
Feb 17	Mon	/	OUTLINE Japan's Tax Systems and Tax Administration Regarding International Taxation
Feb 18	Tue	Target Discounts for international taxation	Basic Knowledge of International Taxation
Feb 19	Wed	Types and Taxation Methods of PE	Types and Taxation Methods of PE
Feb 20	Thu	Seminar in Case Studies Related to PE	VISIT International work at Kanda Tax Office
Feb 21	Fri	Thin-capitalization Tax Systems, etc.	CFC Tax System, etc.
Feb 22	Sat		
Feb 23	Sun		
Feb 24	Mon	Transfer pricing Taxation	APA and Mutual Agreements
Feb 25	Tue	/	VISIT International work at Sapporo Tax Office
Feb 26	Wed	VISIT International work at Sapporo Tax Office	/
Feb 27	Thu	Considerations on Case Studies of International Tax Avoidance (1)	Considerations on Case Studies of International Tax Avoidance (2)
Feb 28	Fri	Summary	/
Mar1	Sat	Return home	/

### List of participants

№	Name	Position
1	S.Orkhon	Head of public administration and management department, GDT
2	D.Javzansuren	Head of Training Center, GDT
3	T.Bayarkhuu	Tax cooperation and administration department, GDT
4	P.Dashbold	Tax cooperation and administration department, GDT
5	T.Gerel	Tax cooperation and administration department, GDT
6	M.Soninbayar	Division of Legal Affair, GDT
7	R.Myagmarjav	Tax collection administration and methodology department, GDT
8	Ts.Togosmaa	State budget revenue department, GDT
9	Ts.Khishigzaya	State budget revenue department, GDT
10	U.Altantuya	Tax collection unit, Bayangol district tax office
11	Z.Jambaldorj	Risk management and information processing unit, Bayanzurkh district tax office
12	Ts.Uuganbayar	Tax collection unit, Bayanzurkh district tax office
13	B.Batchimeg	Audit unit, Chingeltei district tax office
14	Sh.Undraa	Tax payer service unit, Chingeltei district tax office
15	D.Altaikhaan	Taxation control unit, Chingeltei district tax office
16	B.Amartuvshin	Tax payer service unit, Chingeltei district tax office
17	N.Jargaltsetseg	Training center, GDT
18	T.Ariunzayaa	Tax collection unit, Sukhbaatar district tax office
19	U.Munkhtuya	Tax collection unit, Umnugobi province tax office
20	D.Baasandorj	Darkhan-Uul province tax office
21	D.Narmandakh	Tax collection unit, Orkhon province tax office
22	G.Khatanbaatar	Audit division, Tuv province tax office

## 2. International taxation training for GDT management officials (Year 1)

Period: Apr 9 to Apr 11, 2014

Date	Morning	Afternoon
Apr.9	Japan's Tax Systems and Tax Administration	Japan's Tax Systems and Tax Administration
Apr.10	Basics of international taxation	Basics of international taxation
Apr.11	Transfer pricing Taxation (Theories and Case Studies)	Transfer pricing Taxation (Theories and Case Studies)

### List of participants

№	Name	Position
1	T.Batmagnai	Commissioner of the General Department of Taxation
2	CH.Jigjid	Deputy Commissioner of the General Department of Taxation
3	A.Enkhbold	Deputy Commissioner of the General Department of Taxation
4	S.Orkhon	Head of the Public Administration and Management Department
5	B.Badral	Head of the Tax Administration and Cooperation Department
6	S.Enkhbat	Head of the Monitoring and internal audit department
7	D.Khurelchuluun	Head of the Risk Management department
8	Kh.Batbayar	Head of the Information Technology Center
9	D.Tsogtjargal	Head of the Tax collection administration and Methodology department
10	D.Davaatseren	Head of the Tax Audit administration and Methodology department
11	Z.Minjirmaa	Head of the Legal Affairs division
12	D.Bayaraa	Head of the Taxpayer services department
13	D.Javzansuren	Head of the Training Center
14	M.Enkhbayar	Head of the State Budget Revenue and Inspection Department
15	B.Davaademberel	Head of the Audit division, State Budget Revenue and Inspection Department
16	D.Tsogtnaran	Head of the Tax collection and information division, State Budget Revenue and Inspection Department
17	P. Gansukh	Head of the Capital City Tax department

18	Ya.Batjargal	Head of the Tax Audit division, Capital City Tax department
19	B.Ganbold	Head of the Tax collection division, Capital City Tax department
20	Ts.Sainbuyan	Head of the Tax division, Bayan-Zurkh district
21	B.Oyuntuya	Head of the Tax division, Bayangol district
22	D.Badam	Head of the Tax division, Khan-Uul district
23	M.Bolortuya	Head of the Tax division, Chingeltei district
24	Ts.Amartaivan	Head of the Tax division, Sukhbaatar district
25	Ts.Sukhbaatar	Head of the Tax division, Songinokhairkhan district
26	Ch.Battsengel	Head of the Taxpayer services division, State Budget Revenue and Inspection Department
27	Kh.Uranchimeg	Head of the Taxpayer services division, Capital City tax department

### 3. Basic knowledge and practice of EOI in Japan

Period: May 19 to May 21, 2014

Schedule			Time	Person in Charge	Lecture Contents
2014/5/19	(Mon)	AM	9:00-12:00	GDT	Explanation of the current state of Mongolia
				NTA Mr.Kosugi	The basics of exchange of information
		PM	13:00-16:00	Mr.Kosugi	Legal framework for Exchange of Information
2014/5/20	(Tue)	AM	9:00-12:00	NTC Mr. Nakashima	Exchange of Information in Japan (organizations and flow)
		PM	13:00-16:00	NTC Mr.Nakashima	The actual work of Exchange of Information (what the Exchange of Information Section does on a day-to-day basis)
2014/5/21	(Wed)	AM	9:00-12:00	NTC Mr.Nakashima	Case Studies 1
		PM	13:00-16:00	NTA Mr.Kosugi	- Case Studies 2 - DVD presentation (Tax Investigation Across the Seas II)
				Mr.Kosugi /Mr.Nakashima	Preparatory lecture framework, final overall question and answer session

### List of Participants

<b>№</b>	<b>Name</b>	<b>Department/Position</b>
1	Javzansuren.D	GDT-Head of training center
2	Dashbold.Pu	GDT-State tax inspector(Tax administration and cooperation department)
3	Badamtsetseg.B	GDT-State tax inspector of tax collection and information division( SBRD)
4	Davaasuren.L	Bayanzurkh district-State tax inspector of risk management and information processing unit(Tax division)
5	Otgontsetseg.Ts	Darkhan Uul province-State tax inspector of Audit unit(Tax division)
6	Altantuya.U	Bayangol district -State tax inspector of tax collection unit(Tax division)
7	Batjargal.D	Bayangol district -State tax inspector of tax collection unit(Tax division)
8	Otgonchimeg.Ts	Sukhbaatar district-State tax inspector of tax collection unit(Tax division)
9	Delgermaa.Ts	GDT -State tax inspector of tax collection and information division( SBRD)
10	Gerel.T	GDT-State tax inspector(Tax administration and cooperation department)
11	Soninbayar.M	GDT-State tax inspector(Division of legislation)
12	Erdenechimeg.Ch	GDT-State tax inspector of tax collection and information division( SBRD)
13	Tsogtbaatar.B	Chingeltei district-State tax inspector of Tax payer service unit(Tax division)
14	Oyunjargal.P	Tuv Province-State tax inspector of Tax payer service unit
15	Erkeguli.K	Bayanzurkh district-State inspector of tax payer service unit(Tax division)
16	Undraa.Sh	Chingeltei district-State senior tax inspector of Tax payer service unit(Tax division)
17	Ariunzaya.T	GDT-State tax inspector(Tax administration and cooperation department)
18	Adiya.T	GDT-State tax inspector of Public administration and management department

19	Jargaltsetseg.N	GDT-Teacher of training center
20	Tugsjargal.S	GDT-State tax inspector(Division of legislation)
21	Batchimeg.B	Chingeltei district-State tax inspector of Audit unit(Tax division)
22	Jambaldorj.Z	Bayanzurkh district-State tax inspector of risk management and information processing unit(Tax division)
23	Narmandakh.D	Orkhon Province-State tax inspector of tax collection unit(Tax division)
24	Amartuvshin	Chingeltei district-State tax inspector of Tax payer service unit(Tax division)
25	Tungalag.D	GDT-State tax inspector of Tax collection administration and methodoly department
26	Ganbold.Z	GDT-State tax inspector of Tax payer service
27	Togosmaa.Ts	GDT-Head of Legal division (State budget revenue dept.)
28	Uuganbayar.Ts	Bayanzurkh district- State tax inspector of tax collection unit(Tax division)
29	Munkhtuya.Uo	Umnugovi province- State tax inspector of tax collection unit(Tax division)
30	Aligirmaa.Ch	Sukhbaatar district- State tax inspector of tax collection unit(Tax division)
31	Ariunzaya.O	Chingeltei district-State tax inspector of Audit unit(Tax division)
32	Khatanbaatar.G	Tuv province-State tax inspector of Audit division
33	Enkhtuya.Yo	GDT -State tax inspector of audit division (SBRD)
34	Ochirhuyag.B	GDT-Teacher of training center
35	Myagmarjav.Pu	GDT-State tax inspector of Tax collection administration and methodology department
36	Oyuntsetseg.B	Bayangol district-State tax inspector of tax collection unit(Tax division)
37	Altaikhaan.D	Chingeltei district-State tax inspector of taxation control unit
38	Erdeneburen.J	Sukhbaatar district-State tax inspector of Audit unit(Tax division)
39	Bayartsetseg.Pu	Sukhbaatar district-State tax inspector of tax collection unit(Tax division)
40	Purevsuren.O	Khan-Uul district-State tax inspector of tax collection unit(Tax

		division)
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**4. Basic training in international taxation for candidates for dispatch for intermediate international taxation country focused training**

Period: Jun 25 to Jul 4, 2014

Date	Morning	Afternoon
Day 1	Japan's Tax Systems and Tax Administration	Basics of international taxation
Day 2	Transfer Pricing Taxation	Transfer Pricing Taxation
Day 3	Pre-Checks and Mutual Agreements	Exchange of Information
Day 4	Taxation for Permanent Establishments	Taxation for Permanent Establishments
Day 5	Thin-capitalization Taxation, Excessive Interest Taxation, Tax Haven Measures	Thin-capitalization Taxation, Excessive Interest Taxation, Tax Haven Measures
Day 6	Case Studies of International Tax Avoidance	Case Studies of International Tax Avoidance

**List of participants**

№	Name	Department and Position
1	Ch.Erdenechimeg	GDT, State Budget revenue dep
2	B.Badamtsetseg	GDT, State Budget revenue dep
3	D.Adiya	GDT, Public adm.management department
4	S.Tugsjargal	GDT, Legal affairs division
5	D.Tungalag	GDT, Tax audit adm, methodological dept.
6	Ch.Aligarmaa	Sukhbaatar district, Tax dept.
7	J.Erdeneburen	Sukhbaatar district, Tax dept.
8	O.Ariunzaya	Chingeltei district. Tax dept.
9	Yo.Enkhtuya	GDT, State Budget revenue dept.
10	P.Bayartsetseg	Sukhbaatar district, Tax dept.



11	L.Davaasuren	Bayanzurkh district, Tax dept.
12	B.Ochirhuyg	GDT, Training center
13	Ts.Delgermaa	GDT, State Budget revenue dept.
14	Ts.Otgontsetseg	Darkhan-Uul province, Tax dept.
15	B.Oyuntsetseg	Bayangol district, Tax dept.
16	Ts.Otgonchimeg	Sukhbaatar district, Tax dept.
17	Z.Ganbold	GDT, Tax payer service dept.
18	P.Ouynjargal	Tuv Province, Tax.dept.
19	B.Tsogtbaatar	Chingeltei, Tax dept.
20	D.Batjargal	Bayanzurkh, Tax dept.
21	K.Erkeguli	Bayanzurkh, Tax dept.

**5. The pre-seminar for the Training on International Taxation (Intermediate Grade) held in Japan.**

Period: Nov 17 to Nov 28, 2014

Date	Morning	Afternoon
Nov.17	Critical Thinking ①	Critical Thinking ②
Nov.18	Critical Thinking ③	Critical Thinking ④
Nov.19	Case Study on Critical Thinking ①	Case Study on Critical Thinking ②
Nov.20	Review on Basis of I/T ①	Review on Basis of I/T ②
Nov.21	Preparation for Presentation on I/T system in Mongolia ①	Preparation for Presentation on I/T system in Mongolia ②
Nov.24	OECD Model Tax Convention ①	OECD Model Tax Convention ②
Nov.25	Review of Transfer Pricing ①	Review of Transfer Pricing ②
Nov.26	Presentation & Discussion on I/T system in Mongolia ①	Presentation & Discussion on I/T system in Mongolia ②
Nov.27	Presentation & Discussion on I/T system in Mongolia ③	Presentation & Discussion on I/T system in Mongolia ④
Nov.28	Presentation & Discussion on I/T system in Mongolia ⑤	Presentation & Discussion on I/T system in Mongolia ⑤

### List of Participants

<b>№</b>	<b>Name</b>	<b>Department/Position</b>
1	Javzansuren.D	GDT-Head of training center
2	Dashbold.Pu	GDT-State tax inspector(Tax administration and cooperation department)
3	Badamtsetseg.B	GDT-State tax inspector of tax collection and information division( SBRD)
4	Davaasuren.L	Bayanzurkh district-State tax inspector of risk management and information processing unit(Tax division)
5	Otgontsetseg.Ts	Darkhan Uul province-State tax inspector of Audit unit(Tax division)
6	Altantuya.U	Bayangol district -State tax inspector of tax collection unit(Tax division)
7	Batjargal.D	Bayangol district -State tax inspector of tax collection unit(Tax division)
8	Otgonchimeg.Ts	Sukhbaatar district-State tax inspector of tax collection unit(Tax division)
9	Delgermaa.Ts	GDT -State tax inspector of tax collection and information division( SBRD)
10	Gerel.T	GDT-State tax inspector(Tax administration and cooperation department)
11	Soninbayar.M	GDT-State tax inspector(Division of legislation)
12	Erdenechimeg.Ch	GDT-State tax inspector of tax collection and information division( SBRD)
13	Tsogtbaatar.B	Chingeltei district-State tax inspector of Tax payer service unit(Tax division)
14	Oyunjargal.P	Tuv Province-State tax inspector of Tax payer service unit
15	Erkeguli.K	Bayanzurkh district-State inspector of tax payer service unit(Tax division)
16	Undraa.Sh	Chingeltei district-State senior tax inspector of Tax payer service unit(Tax division)
17	Ariunzaya.T	GDT-State tax inspector(Tax administration and cooperation department)
18	Adiya.T	GDT-State tax inspector of Public administration and management department

19	Jargaltsetseg.N	GDT-Teacher of training center
20	Tugsjargal.S	GDT-State tax inspector(Division of legislation)
21	Batchimeg.B	Chingeltei district-State tax inspector of Audit unit(Tax division)
22	Jambaldorj.Z	Bayanzurkh district-State tax inspector of risk management and information processing unit(Tax division)
23	Narmandakh.D	Orkhon Province-State tax inspector of tax collection unit(Tax division)
24	Amartuvshin	Chingeltei district-State tax inspector of Tax payer service unit(Tax division)
25	Tungalag.D	GDT-State tax inspector of Tax collection administration and methodoly department
26	Ganbold.Z	GDT-State tax inspector of Tax payer service
27	Togosmaa.Ts	GDT-Head of Legal division (State budget revenue dept.)
28	Uuganbayar.Ts	Bayanzurkh district- State tax inspector of tax collection unit(Tax division)
29	Munkhtuya.Uo	Umnugovi province- State tax inspector of tax collection unit(Tax division)
30	Aligirmaa.Ch	Sukhbaatar district- State tax inspector of tax collection unit(Tax division)
31	Ariunzaya.O	Chingeltei district-State tax inspector of Audit unit(Tax division)
32	Khatanbaatar.G	Tuv province-State tax inspector of Audit division
33	Enkhtuya.Yo	GDT -State tax inspector of audit division (SBRD)
34	Ochirhuyag.B	GDT-Teacher of training center
35	Myagmarjav.Pu	GDT-State tax inspector of Tax collection administration and methodology department
36	Oyuntsetseg.B	Bayangol district-State tax inspector of tax collection unit(Tax division)
37	Altaikhaan.D	Chingeltei district-State tax inspector of taxation control unit
38	Erdeneburen.J	Sukhbaatar district-State tax inspector of Audit unit(Tax division)
39	Bayartsetseg.Pu	Suhkbaatar district-State tax inspector of tax collection unit(Tax division)
40	Purevsuren.O	Khan-Uul district-State tax inspector of tax collection

		unit(Tax division)
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**6. Topical training on the advanced international taxation by NTA tailored to specific subjects requested by GDT**

Period: Feb 16 to Feb 27, 2015

Date	day	Mornings (9:30-12:30)	Afternoons (13:30-16:30)
2/16	Mon		Arrival in Japan
2/17	Tue	Briefing	Program orientation Mongolia's tax system
2/18	Wed	Execution system for international taxation in Japan Trends in international taxation	Source rules
2/19	Thu	International anti-avoidance measures (transfer price taxation)	International anti-avoidance measures (except transfer price taxation)
2/20	Fri	International double taxation exclusion measures, Tax treaties	Visit to the Tokyo Regional Taxation Bureau
2/21	Sat		
2/22	Sun		
2/23	Mon	Presentations, case studies and discussions	Presentations, case studies and discussions
2/24	Tue	Presentations, case studies and discussions	Visit to the Kojimachi Tax Office
2/25	Wed	Presentations, case studies and discussions	Presentations, case studies and discussions
2/26	Thu	Evaluation meeting	
2/27	Fri	Return home	

**List of Participants**

№	Name	Department/Position
1	Enkhbayar.D	Head of State budget revenue department
2	Javzansuren.D	GDT-Head of training center
3	Dashbold.Pu	GDT-State tax inspector (Tax administration and cooperation department)
4	Gerel.T	GDT-State tax inspector (Tax administration and cooperation department)
5	Soninbayar.M	GDT-State tax inspector (Division of legislation)
6	Ganbold.Z	GDT-State tax inspector of Tax payer service
7	Myagmarjav.Pu	GDT-State tax inspector of Tax collection administration and methodology

		department
8	Jargaltsetseg.N	GDT-Teacher of training center
9	Ochirhuyag.B	GDT-Teacher of training center
10	Badamtsetseg.B	State tax inspector of tax collection and information division of SBRD
11	Erdenechimeg.Ch	State tax inspector of tax collection and information division of SBRD
12	Batchimeg.B	Chingeltei district-State tax inspector of Audit unit (Tax division)
13	Undraa.Sh	Chingeltei district-State senior tax inspector of Tax payer service unit (Tax division)
14	Amartuvshin	Chingeltei district-State tax inspector of Tax payer service unit (Tax division)
15	Ariunzaya.O	Chingeltei district-State tax inspector of Audit unit (Tax division)
16	Altantuya.U	Bayangol district -State tax inspector of tax collection unit (Tax division)
17	Batjargal.D	Bayangol district-State tax inspector of tax collection unit (Tax division)
18	Erdeneburen.J	Sukhbaatar district-State tax inspector of Audit unit (Tax division)
19	Erkeguli.K	Bayanzurkh district-State inspector of tax payer service unit (Tax division)
20	Khatanbaatar.G	Tuv province-State tax inspector of Audit division
21	Narmandakh.D	Orkhon Province-State tax inspector of tax collection unit (Tax division)

## 7. The Follow-up Seminar of Country-focused training in Mongolia.

Period: Apr 6 to Apr 10, 2015

Date	Morning	Afternoon
Apr.6	New Topics on International Taxation based on BEPS	New Topics on Transfer Pricing based on all TPMs
Apr.7	International Taxation of Mongolia ①	International Taxation of Mongolia ②
Apr.8	Case Study ① (Preparation)	Case Study ② (Preparation)
Apr.9	Case Study ③ (Presentation & Discussion)	Case Study ④ (Presentation & Discussion)
Apr.10	Case Study ⑤ (Presentation & Discussion)	Case Study ⑥ (Presentation & Discussion)

### List of participants

№	Name	Department/Position
1	Tungalag.D	Inspector of Tax collection administration and methodology department, GDT
2	Tugsjargal.S	Inspector of Legal division, GDT
3	Togosmaa.Ts	Head of Legal division, State budget revenue and audit department
4	Delgermaa.Ts	Inspector of tax collection and information division, SBRD
5	Enkhtuya.Yo	Inspector of audit division, SBRD
6	Khishigzaya.Ts	Inspector of tax collection and information division, SBRD
7	Oyuntsetseg.B	Inspector of tax collection unit, Bayangol district tax office
8	Jambaldorj.Z	Inspector of risk management and information processing unit, Bayanzurkh district tax office
9	Davaasuren.L	Inspector of risk management and information processing unit, Bayanzurkh district tax office
10	Uuganbayar.Ts	Inspector of tax collection unit, Bayanzurkh district tax office
11	Altaikhaan.D	Inspector of taxation control unit, Chingeltei district tax office
12	Tsogtbaatar.B	Inspector of Tax payer service unit, Chingeltei district tax office
13	Adiya.T	Inspector of tax collection unit, Sukhbaatar district tax office
14	Aligirmaa.Ch	Inspector of tax collection division, Capital city tax department
15	Otgonchimeg.Ts	Inspector of tax collection unit, Sukhbaatar district tax office
16	Bayartsetseg.Pu	Inspector of tax collection unit, Sukhbaatar district tax office
17	Ariunzaya.T	Inspector of tax collection unit, Sukhbaatar district tax office

18	Munkhtuya.Uo	Inspector of tax collection unit, Umnugovi province tax office
19	Oyunjargal.P	Inspector of Tax payer service unit, Tuv province tax office
20	Otgontsetseg.Ts	Inspector of Audit unit, Darkhan Uul province tax office
21	Shagdarsuren.M	Senior inspector of Audit unit, Sukhbaatar district tax office
22	Battseren.O	Senior inspector of Audit unit, Chingeltei district tax office
23	Enkhjargal.G	Senior inspector of Audit unit, Bayanzurkh district tax office
24	Gangamaa.M	Head of Audit division, Capital city tax department
25	Altantsetseg.Ts	Inspector of Tax collection administration and methodology department, GDT
26	Bayarmaa.M	Senior inspector of Audit unit, Sukhbaatar district tax office
27	Tsevelmaa.B	Senior inspector of Audit unit, Bayangol district tax office
28	Munkhzul.B	Senior inspector of Audit unit, Khan-Uul district tax office

### 8. The 1<sup>st</sup> training for general staff

Period: Aug 17 to Aug 21, 2015

Date	Morning	Afternoon
Aug.17	Mongolian System ① (Source Rule)	Mongolian System ② (Permanent Establishment)
Aug.18	Mongolian System ③ (Transfer Pricing)	Mongolian System ④ (Anti International Tax Avoidance)
Aug.19	Basis of International Taxation ①	Basis of International Taxation ②
Aug.20	Basis of Transfer Pricing ①	Basis of Transfer Pricing ②
Aug.21	Mongolian System ⑤ (Relief Against Double Taxation)	Mongolian System ⑥ (Double Tax Treaties)

### List of Participants

<b>№</b>	<b>Name</b>	<b>Department/Position</b>
1	Agiimaa.G	State Tax Inspector of Capital city tax department
2	Otgontsetseg.B	State Tax Inspector of Capital city tax department
3	Bolormaa.J	State Tax Inspector of Capital city tax department
4	Enkhtuya.O	State Tax Inspector of Bayanzurkh district tax office
5	Enkhbaatar.Ts	State Tax Inspector of Bayanzurkh district tax office
6	Khandaa.Ch	State Tax Inspector of Bayanzurkh district tax office
7	Tsend-Ayush.G	State Tax Inspector of Bayanzurkh district tax office
8	Tumendemberel.S	State Tax Inspector of Bayanzurkh district tax office
9	Tserenkhuu.B	State Tax Inspector of Bayanzurkh district tax office
10	Tserenbadam.D	State Tax Inspector of Bayanzurkh district tax office
11	Bumdelger.G	State Tax Inspector of Bayanzurkh district tax office
12	Chojilsuren.M	State Tax Inspector of Bayangol district tax office
13	Khaliun.E	State Tax Inspector of Bayangol district tax office
14	Altantsetseg.B	State Tax Inspector of Bayangol district tax office
15	Baigalmaa.S	State Tax Inspector of Bayangol district tax office
16	Enkhjargal.Sh	State Tax Inspector of Bayangol district tax office
17	Tsend.Ch	State Tax Inspector of Bayangol district tax office
18	Sarangerel.Z	State Tax Inspector of Bayangol district tax office
19	Norjmaa.J	State Tax Inspector of Sukhbaatar district tax office
20	Zolbayar.O	State Tax Inspector of Sukhbaatar district tax office
21	Zaya.D	State Tax Inspector of Sukhbaatar district tax office
22	Amarjargal.Ts	State Tax Inspector of Sukhbaatar district tax office
23	Orgil.Z	State Tax Inspector of Sukhbaatar district tax office
24	Baigalmaa.Ch	State Tax Inspector of Sukhbaatar district tax office
25	Tseveendorj.E	State Tax Inspector of Sukhbaatar district tax office
26	Batbold.Ts	State Tax Inspector of Sukhbaatar district tax office
27	Altantsatsral.B	State Tax Inspector of Sukhbaatar district tax office
28	Shavagtseren.Ts	State Tax Inspector of Songino-Khairkhan district tax office



29	Sundui.B	State Tax Inspector of Songino-Khairkhan district tax office
30	Batsukh.Ch	State Tax Inspector of Songino-Khairkhan district tax office
31	Sainjargal.T	State Tax Inspector of Songino-Khairkhan district tax office
32	Altangerel.E	State Tax Inspector of Songino-Khairkhan district tax office
33	Davaadorj.Ts	State Tax Inspector of Songino-Khairkhan district tax office
34	Khaliunbaatar.N	State Tax Inspector of Songino-Khairkhan district tax office
35	Buyan-Ravjikh.O	State Tax Inspector of Khan-Uul district tax office
36	Khatantuul.N	State Tax Inspector of Khan-Uul district tax office
37	Munkhbaatar.B	State Tax Inspector of Khan-Uul district tax office
38	Enkhtuya.Ch	State Tax Inspector of Khan-Uul district tax office
39	Oyunjargal.J	State Tax Inspector of Khan-Uul district tax office
40	Enkhtuul.B	State Tax Inspector of Khan-Uul district tax office
41	Mandakh.T	State Tax Inspector of Khan-Uul district tax office
42	Enkhzul.S	State Tax Inspector of Chingeltei district tax office
43	Bat-Erdene.B	State Tax Inspector of Chingeltei district tax office
44	Gantulga.G	State Tax Inspector of Chingeltei district tax office
45	Alimaa.B	State Tax Inspector of Chingeltei district tax office
46	Enkhchimeg.A	State Tax Inspector of Chingeltei district tax office
47	Altankhuyag.B	State Tax Inspector of Chingeltei district tax office
48	Bayarchimeg.Ch	State Tax Inspector of Chingeltei district tax office

### 9. Follow up training for core staff

Period: Feb 29 to Mar 4, 2016

Date	Morning	Afternoon
Feb.29	Tax Treaty	Tax Treaty
Mar.1	Tax Treaty	Tax Treaty
Mar.2	Tax Treaty of Mongolia (Preparation of Presentation)	Tax Treaty of Mongolia (Preparation of Presentation)
Mar.3	Tax Treaty of Mongolia (Presentation)	Tax Treaty of Mongolia (Presentation)
Mar.4	BEPS	BEPS

### List of Participants

№	Name	Department/Position
1	Tugsjargal.S	Head of Finance and Investment department, General Authority for Customs and Taxation
2	Javzansuren.D	Head of Training center, GACT
3	Ariunzaya.O	Policy Implementation and International taxation division, Strategy Development department, GACT
4	Gerel.T	Policy Implementation and International taxation division, Strategy Development department, GACT
5	Bulgan.G	Policy Implementation and International taxation division, Strategy Development department, GACT
6	Soninbayar.M	Legal affairs department, GACT
7	Togosmaa.Ts	Legal affairs department, GACT
8	Bayarmaa.N	Administration and Management Department, GACT
9	Undraa.Sh	Taxpayer support department, GACT
10	Tungalag.D	Tax revenue department, GACT
11	Jargaltsetseg.N	Training center, GACT
12	Ochirkhuyag.B	Training center, GACT
13	Enkhtuya.Yo	State budget revenue and Control department
14	Badamtsetseg.B	State budget revenue and Control department
15	Erdenechimeg.Ch	State budget revenue and Control department
16	Bilguun.Ts	Policy Implementation and International taxation division, Strategy Development department, GACT
17	Aligirmaa.Ch	Capital city tax office
18	Oyuntsetseg.B	Tax collection unit, Bayangol district tax office

19	Altantuya.U	Tax collection unit, Bayangol district tax office
20	Batjargal.D	Tax collection unit, Bayangol district tax office
21	Davaasuren.L	Tax collection unit, Bayanzurkh district tax office
22	Uuganbayar.Ts	Tax collection unit, Bayanzurkh district tax office
23	Batchimeg.B	Taxpayer service unit, Chingeltei district tax office
24	Amartuvshin.B	Taxpayer service unit, Chingeltei district tax office
25	Tsogtbaatar.B	Taxpayer service unit, Chingeltei district tax office
26	Otgonchimeg.Ts	Tax collection unit, Sukhbaatar district tax office
27	Bayartsetseg.Pu	Tax collection unit, Sukhbaatar district tax office
28	Erdeneburen.J	Audit unit, Sukhbaatar district tax office
29	Munkhtuya.U	Tax collection unit, Umnugovi province tax office
30	Narmandakh.D	Tax collection unit, Orkhon province tax office
31	Oyunjargal.Pu	Taxpayer service unit, Tuv province tax office
32	Khatanbaatar.G	Audit unit, Tuv province tax office
33	Otgontsetseg.Ts	Darkhan-Uul province tax office
34	Erkeguli.K	Bayanzurkh district tax office
35	Altaikhaan.D	Chingeltei district tax office

## 10. The second training for general staff

Period: Mar 7 to Mar 11, 2016

Date	Morning	Afternoon
Mar.7	Basic of International Taxation — From Experience of Japan —	Transfer Pricing
Mar.9	Mongolian International taxation (resident, non-resident)	Mongolian International Taxation (PE)
Mar.10	Mongolian International Taxation (Source Rule)	Mongolian International Taxation (Preventing International Tax Evasion)
Mar.11	Mongolian International Taxation (Relief Against Double Taxation)	Mongolian International Taxation (Tax Treaty)

### List of Participants

No	Name	Department/Position
1	B.Khuselchimeg	State Tax Inspector of Bayangol District Tax Office
2	M.Torkhuu	State Tax Inspector of Bayangol District Tax Office
3	T.Bolortungalag	State Tax Inspector of Bayangol District Tax Office
4	M.Otgontuya	State Tax Inspector of Bayangol District Tax Office
5	Sh.Enkhjargal	State Tax Inspector of Bayangol District Tax Office
6	Ts.Munkhjargal	State Tax Inspector of Bayangol District Tax Office
7	B.Bolormaa	State Tax Inspector of Bayangol District Tax Office
8	D.Otgontsetseg	State Tax Inspector of Bayangol District Tax Office
9	T.Enkhbileg	State Tax Inspector of Bayangol District Tax Office
10	Ch.Lhamragchaa	State Tax Inspector of Chingeltei District Tax Office
11	J.Sainsanaa	State Tax Inspector of Chingeltei District Tax Office
12	V.Enkhzaya	State Tax Inspector of Chingeltei District Tax Office
13	T.Oyunchimeg	State Tax Inspector of Chingeltei District Tax Office
14	D.Gantuul	State Tax Inspector of Chingeltei District Tax Office
15	L.Barhasbaatar	State Tax Inspector of Chingeltei District Tax Office
16	B.Bayartsetseg	State Tax Inspector of Chingeltei District Tax Office
17	S.Tserendolgor	State Tax Inspector of Chingeltei District Tax Office

18	N.Hatantuul	State Tax Inspector of Khan-Uul District Tax Office
19	Ts.Amarjargal	State Tax Inspector of Khan-Uul District Tax Office
20	Ch.Bolortsetseg	State Tax Inspector of Khan-Uul District Tax Office
21	Ch.Dulamhand	State Tax Inspector of Khan-Uul District Tax Office
22	J.Oyunjargal	State Tax Inspector of Khan-Uul District Tax Office
23	S.Batchuluun	State Tax Inspector of Khan-Uul District Tax Office
24	S.Erdenesuvd	State Tax Inspector of Khan-Uul District Tax Office
25	S.Tamiraa	State Tax Inspector of Bayanzurkh District Tax Office
26	B.Serchmaa	State Tax Inspector of Bayanzurkh District Tax Office
27	Ts.Tsengel	State Tax Inspector of Bayanzurkh District Tax Office
28	B.Ariunzul	State Tax Inspector of Bayanzurkh District Tax Office
29	G.Ariuntsetseg	State Tax Inspector of Bayanzurkh District Tax Office
30	B.Naransolongo	State Tax Inspector of Bayanzurkh District Tax Office
31	B.Mungunchimeg	State Tax Inspector of Bayanzurkh District Tax Office
32	Yu.Luvsantseren	State Tax Inspector of Bayanzurkh District Tax Office
33	Ts.Oyu-Erdene	State Tax Inspector of Bayanzurkh District Tax Office
34	B.Burenjargal	State Tax Inspector of Sukhbaatar District Tax Office
35	Z.Orgil	State Tax Inspector of Sukhbaatar District Tax Office
36	Sh.Naranzul	State Tax Inspector of Sukhbaatar District Tax Office
37	J.Tsenddoo	State Tax Inspector of Sukhbaatar District Tax Office
38	N.Otgontsetseg	State Tax Inspector of Sukhbaatar District Tax Office
39	E.Oyun-Erdene	State Tax Inspector of Sukhbaatar District Tax Office
40	Kh.Batjargal	State Tax Inspector of Sukhbaatar District Tax Office
41	Ch.Khaliun	State Tax Inspector of Sukhbaatar District Tax Office
42	O.Zolbayar	State Tax Inspector of Sukhbaatar District Tax Office
43	B.Baatar	State Tax Inspector of Songino Khaikhan District Tax Office
44	Ch.Otgonbayar	State Tax Inspector of Songino Khaikhan District Tax Office
45	D.Khatanbaatar	State Tax Inspector of Songino Khaikhan District Tax Office
46	M.Munkhjargal	State Tax Inspector of Songino Khaikhan District Tax Office
47	D.Ulziidelger	State Tax Inspector of Songino Khaikhan District Tax Office

48	B.Bat-Amgalan	State Tax Inspector of Songino Khaikhan District Tax Office
49	D.Dembereldavaa	State Tax Inspector of Baganuur District Tax Office
50	Z.Khongor	State Senior Tax Inspector of Nalaikh District Tax Office

### 11. Seminar by Staff from the NTA in Japan

Period: Jun 21 to Jun 23, 2016

Date	Morning	Afternoon
Jun.21	Overseas trading audit methods (permanent establishments) Overseas trading audit methods (national resources)	Overseas trading audit methods (e-commerce)
Jun.22	Case study (transfer price taxation systems) Transfer price audits and preliminary confirmation screening work	BEPS support related to transfer pricing
Jun.23	Mutual consultations (MAP)	Inspection visit (Call Center)

### List of Participants

No	Name	Department/Position
1	Tugsjargal.S	Head of Finance and Investment department, General Authority for Customs and Taxation
2	Javzansuren.D	Head of Training center, GACT
3	Ariunzaya.O	Policy Implementation and International taxation division, Strategy Development department, GACT
4	Gerel.T	Policy Implementation and International taxation division, Strategy Development department, GACT
5	Bulgan.G	Policy Implementation and International taxation division, Strategy Development department, GACT
6	Enkhtuya.Yo	Policy Implementation and International taxation division, Strategy Development department, GACT
7	Soninbayar.M	Legal affairs department, GACT
8	Togosmaa.Ts	Legal affairs department, GACT

9	Undraa.Sh	Taxpayer support department, GACT
10	Jargaltsetseg.N	Taxpayer support department, GACT
11	Aligirmaa.Ch	Call center, GACT
12	Amartuvshin.B	Call center, GACT
13	Batchimeg.B	Call center, GACT
14	Tungalag.D	Tax revenue department, GACT
15	Ochirkhuyag.B	State budget revenue and Control department
16	Badamtsetseg.B	State budget revenue and Control department
17	Erdenechimeg.Ch	State budget revenue and Control department
18	Oyuntsetseg.B	Tax collection unit, Bayangol district tax office
19	Altantuya.U	Tax collection unit, Bayangol district tax office
20	Batjargal.D	Tax collection unit, Bayangol district tax office
21	Davaasuren.L	Tax collection unit, Bayanzurkh district tax office
22	Uuganbayar.Ts	Tax collection unit, Bayanzurkh district tax office
23	Tsogtbaatar.B	Taxpayer service unit, Chingeltei district tax office
24	Otgonchimeg.Ts	Tax collection unit, Sukhbaatar district tax office
25	Bayartsetseg.Pu	Tax collection unit, Sukhbaatar district tax office
26	Erdeneburen.J	Audit unit, Sukhbaatar district tax office
27	Munkhtuya.U	Tax collection unit, Umnugovi province tax office
28	Narmandakh.D	Tax collection unit, Orkhon province tax office
29	Oyunjargal.Pu	Taxpayer service unit, Tuv province tax office
30	Khataubaatar.G	Audit unit, Tuv province tax office
31	Khorolsuren.M	Head of Policy Implementation and International taxation division, Strategy Development department, GACT
32	Zolzaya.B	Policy Implementation and International taxation division, Strategy Development department, GACT
33	Bayasgalan.S	Head of Tax audit and Methodology department, GACT
34	Enkhbat.S	Tax audit and Methodology department, GACT
35	Munkhgerel.A	Tax audit and Methodology department, GACT
36	Burmaa.G	Tax audit and Methodology department, GACT
37	Ulziibayar.Ts	Tax audit and Methodology department, GACT

38	Ganbat.D	Tax audit and Methodology department, GACT
39	Enkh-Oyun.Yo	Tax audit and Methodology department, GACT
40	Saikhanchuluun.D	Tax audit and Methodology department, GACT
41	Altantsetseg.M	Audit division, State budget revenue and Control department
42	Enkhbaatar.Ts	Audit division, State budget revenue and Control department
43	Amarbaatar.L	Audit division, State budget revenue and Control department
44	Narantuya.L	Audit division, State budget revenue and Control department
45	Narangerel.U	Audit division, State budget revenue and Control department
46	Batbileg.D	Audit division, Capital city tax office
47	Bayarmaa.M	Audit division, Capital city tax office
48	Tsevelmaa.B	Audit unit, Bayangol district tax office
49	Narantuya.Ch	Audit unit, Bayanzurkh district tax office
50	Naranchimeg.D	Audit unit, Sukhbaatar district tax office
51	Munkhlut.B	Audit unit, Chingeltei district tax office
52	Uyanga.S	Audit unit, Khan-Uul district tax office
53	Munkhzul.B	Audit unit, Sukhbaatar district tax office

## 12. The third training for general staff

Period: Sep 19 to Sep 23 2016

Date	Morning	Afternoon
2016.9.19	Basis of Transfer Pricing	Basis of Transfer Pricing
2016.9.20	Tax Treaty	Tax Treaty
2016.9.21	International taxation of Mongolia ① (Resident, Non-resident)	International taxation of Mongolia ② (Permanent establishment)
2016.9.22	International taxation of Mongolia ③ (Source rule)	International taxation of Mongolia ④ (Anti tax avoidance rules)
2016.9.23	International taxation of Mongolia ⑤ (Relief measure against double taxation)	International taxation of Mongolia ⑥ (Tax Treaty)



### List of participants

<b>№</b>	<b>Name</b>	<b>Department/Position</b>
1	G.Emkhjin	Inspector of Tax revenue department, GDT
2	Pu.Delgermaa	Inspector of Capital city tax office
3	B.Naranbaatar	Inspector of Bayangol district tax office
4	Sh.Enkhjargal	Inspector of Bayangol district tax office
5	L.Davaasuren	Inspector of Bayanzurkh district tax office
6	Yu.Luvsantseren	Inspector of Bayanzurkh district tax office
7	B.Altangoo	Inspector of Sukhbaatar district tax office
8	Ts.Aлтаibuyan	Inspector of Sukhbaatar district tax office
9	G.Khandtsetseg	Inspector of Khan-uul district tax office
10	R.Soyongiikh	Inspector of Songinokhairkhan district tax office
11	B.Ariunaa	Inspector of Songinokhairkhan district tax office
12	B.Enkhzaya	Inspector of Chingeltei district tax office
13	D.Zoljargal	Inspector of Chingeltei district tax office
14	Kh.Sainkhuu	Inspector of Baganuur district tax office
15	N.Tuvshinjargal	Inspector of Nalaikh district tax office
16	I.Zud	Inspector of Bayangol district tax office
17	B.Altanzul	Inspector of Bayangol district tax office
18	M.Uurtsaikh	Inspector of Bayangol district tax office
19	L.Tsogtsaikhan	Inspector of Bayanzurkh district tax office

20	E.Zolzaya	Inspector of Bayanzurkh district tax office
21	E.Altangerel	Inspector of Bayanzurkh district tax office
22	E.Tseveendorj	Inspector of Sukhbaatar district tax office
23	Ts.Amarjargal	Inspector of Sukhbaatar district tax office
24	R.Badamsuren	Inspector of Sukhbaatar district tax office
25	U.Uuganbayar	Inspector of Khan-uul district tax office
26	D.Selengee	Inspector of Khan-uul district tax office
27	U.Urgujih	Inspector of Songinokhairkhan district tax office
28	T.Sainjargal	Inspector of Songinokhairkhan district tax office
29	E.Narantuya	Inspector of Chingeltei district tax office
30	B.Odontuya	Inspector of Chingeltei district tax office
31	Ts.Munkhjargal	Inspector of Bayangol district tax office
32	L.Otgonjargal	Inspector of Bayangol district tax office
33	D.Udval	Inspector of Bayangol district tax office
34	B.Mungunchimeg	Inspector of Bayanzurkh district tax office
35	D.Tsetsenkhuu	Inspector of Bayanzurkh district tax office
36	A.Munkhdelger	Inspector of Bayanzurkh district tax office
37	G.Khosbayar	Inspector of Songinokhairkhan district tax office
38	L.Altan-Erdene	Inspector of Songinokhairkhan district tax office
39	Ts.Nasanbuyan	Inspector of Songinokhairkhan district tax office
40	B.Altantsatsral	Inspector of Sukhbaatar district tax office

41	B.Gonchigsumlaa	Inspector of Sukhbaatar district tax office
42	Ch.Bolormaa	Inspector of Sukhbaatar district tax office
43	Sh.Munkhzaya	Inspector of Khan-uul district tax office
44	B.Khudersaikhan	Inspector of Khan-uul district tax office
45	D.Baasanragchaa	Inspector of Khan-uul district tax office
46	B.Alimaa	Inspector of Chingeltei district tax office
47	M.Bolortuya	Inspector of Chingeltei district tax office
48	N.Tsendsuren	Inspector of Chingeltei district tax office
49	T.Ariuntungalag	Inspector of Baganuur district tax office
50	Sh.Anargul	Inspector of Nalaikh district tax office

### 13. Peer review

Date: Sep27, 2016

#### List of participants

<b>№</b>	<b>Name</b>	<b>Department/Position</b>
1	S.Tugsjargal	Inspector of General Department of Taxation
2	M.Soninbayar	Inspector of GDT
3	B.Ochirkhuyag	Inspector of State budget revenue and audit department
4	U.Altantuya	Inspector of Bayanzurkh district tax office
5	B.Tsogtbaatar	Inspector of Chingeltei district tax office
6	U.Munkhtuya	Inspector of Umnugovi province tax office

7	B.Badamtsetseg	Inspector of SBRD
8	Ts.Togosmaa	Inspector of GDT
9	B.Oyuntsetseg	Inspector of Bayangol district tax office
10	B.Amartuvshin	Inspector of Call center
11	D.Narmandakh	Inspector of Orkhon province tax office
12	O.Ariunzaya	Inspector of GDT
13	Sh.Undraa	Inspector of GDT
14	Ch.Erdenechimeg	Inspector of SBRD
15	L.Davaasuren	Inspector of Bayanzurkh district tax office
16	Ts.Otgonchimeg	Inspector of Sukhbaatar district tax office
17	Pu.Oyunjargal	Inspector of Tuv province tax office
18	T.Gerel	Inspector of GDT
19	N.Jargaltsetseg	Inspector of GDT
20	Ch.Aligirmaa	Inspector of Capital city tax department
21	Ts.Uuganbayar	Inspector of Bayanzurkh district tax office
22	Pu.Bayartsetseg	Inspector of Sukhbaatar district tax office
23	G.Khatanbaatar	Inspector of Tuv province tax office
24	Yo.Enkhtuya	Inspector of GDT
25	D.Tungalag	Inspector of GDT
26	D.Batjargal	Inspector of Bayangol district tax office
27	B.Batchimeg	Inspector of Call center

28	J.Erdeneburen	Inspector of Sukhbaatar district tax office
29	Ts.Otgontsetseg	Inspector of Darkhan-Uul province tax office

## **Tax Collection**

### **1. The country focused training**

Period: Apr 7 to Apr 11, 2014

Date	Morning	Afternoon
April 7 (Mon)	Program orientation	Outline of Japan's tax systems and administration
April 8 (Tue)	NTA collection systems	Outline of systems related to the collection of national taxes
April 9 (Wed)	Collections procedures (forced collection, collection alleviation measures) Q&A session	Collections work in the Tokyo Metropolitan Government
April 10 (Thu)	Visit to a Call Center	Collections work in tax offices
April 11 (Fri)	Q&A session	Evaluation meeting and meeting to exchange ideas

### **List of Participants**

<b>№</b>	<b>Name</b>	<b>Position</b>
1	D.Tsogtjargal	Head of Tax collection administration and methodology department, GDT
2	O.Altankhorol	Senior inspector of Tax collection administration and methodology department, GDT
3	N.Dolgormaa	Inspector of Tax collection administration and methodology department, GDT
4	B.Purevdulam	Inspector of Taxpayer service department, GDT
5	B.Munkhbat	Inspector of IT center, GDT
6	S.Sugarsumiya	Senior inspector of Monitoring and internal audit department, GDT

7	B.Tsogtnaran	Head of Tax collection division-State budget revenue and audit department, GDT
8	Z.Tseesuren	Inspector of Monitoring division -Sukhbaatar district tax office
9	Ts.Amartaivan	Head of tax division-Sukhbaatar district tax office
10	Ouyngerel	Head of tax division-Songinokhairhan district tax office

## 2. Seminar by staff of Japanese National Tax Agency

Period: May 18 to May 22, 2015

Date	Mornings	Afternoons
May 18th (Mon)	Depart Narita	Arrive at Ulaanbaatar
May 19th (Tue)	Opening remarks Presentation by Mongolia Mongolia's collection system (overview)	Collections (Overview, delinquency proceedings) (1)
May 20th (Wed)	Collections (Overview, delinquency proceedings) (2)	Collections (Overview, delinquency proceedings) (3)
May 21st (Thu)	Collections (Overview, delinquency proceedings) (4)	Call center visit, etc. Q&A session
May 22nd (Fri)	Depart Ulaanbaatar	Arrive at Narita

### List of participants

№	Name	Position/Department
1	Tsogtnaran.B	Senior inspector of tax collection division, State budget revenue and audit department (SBRD)
2	Altantsetseg.D	Senior inspector of tax collection division, SBRD
3	Not identified	Senior inspector of tax collection division, Capital city tax department.
4	Altantsetseg.M	Senior inspector of tax collection division, Capital city tax department.

5	Tserenjamts.S	Senior inspector of tax collection division, Capital city tax department.
6	Urtnasan.B	Senior inspector of tax collection division, Capital city tax department.
7	Tamir.T	Senior inspector of tax collection unit, Khan-Uul district tax office
8	Not identified	Senior inspector of tax collection unit, Khan-Uul district tax office
9	Bolormaa.N	Senior inspector of tax collection unit, Bayanzurkh district tax office
10	Munkh-Uchral.D	Senior inspector of tax collection unit, Bayanzurkh district tax office
11	Oyunchimeg.G	Senior inspector of tax collection unit, Sukhbaatar district tax office
12	Ganbaatar.Ch	Senior inspector of tax collection unit, Sukhbaatar district tax office
13	Munkhtsetseg.I	Senior inspector of tax collection unit, Bayangol district tax office
14	Tsolmon.Ya	Senior inspector of tax collection unit, Bayangol district tax office
15	Narantsetseg.Yo	Senior inspector of tax collection unit, Baganuur district tax office
16	Burmaa.G	Senior inspector of tax collection unit, Chingeltei district tax office
17	Otgontuya.Sh	Senior inspector of tax collection unit, Chingeltei district tax office
18	Oyungerel.S	Senior inspector of tax collection unit, Songinokhairkhan district tax office
19	Nyamaa.Sh	Senior inspector of tax collection unit, Songinokhairkhan district tax office
20	Ariuntsetseg.S	Senior inspector of tax collection unit, Nalaikh district tax office
21	Oyuntulhuur.Kh	Senior inspector of tax collection unit, Arkhangai province tax office
22	Berbolat.Kh	Senior inspector of tax collection unit, Bayan-ulgii province tax office
23	Enkhmandakh.Kh	Senior inspector of tax collection unit, Bayankhongor province tax office
24	Oyungerel.D	Senior inspector of tax collection unit, Bulgan province tax office
25	Khongorzul.A	Senior inspector of tax collection unit, Govi-Altai province tax office
26	Battuya.B	Senior inspector of tax collection unit, Dornogovi province tax office
27	Naranbaatar.S	Senior inspector of tax collection unit, Dornod province tax office
28	Munguntuya.S	Senior inspector of tax collection unit, Dundgovi province tax office
29	Sodnom.L	Senior inspector of tax collection unit, Zavkhan province tax office
30	Baigalmaa.Pu	Senior inspector of tax collection unit, Uvurkhangai province tax office

31	Tsend.B	Senior inspector of tax collection unit, Umnugovi province tax office
32	Chuluuntsetseg.Ts	Senior inspector of tax collection unit, Sukhbaatar province tax office
33	Chuluuntsetseg.Ts	Senior inspector of tax collection unit, Selenge province tax office
34	Narantsetseg.D	Senior inspector of tax collection unit, Tuv province tax office
35	Tuul.M	Senior inspector of tax collection unit, Uvs province tax office
36	Narantuya.D	Senior inspector of tax collection unit, Khovd province tax office
37	Otgonbayar.D	Senior inspector of tax collection unit, Khuvsgul province tax office
38	Munkhtuvshin.B	Senior inspector of tax collection unit, Khentii province tax office
39	Gantumur.D	Senior inspector of tax collection unit, Darkhan-Uul province tax office
40	Oktyabri.B	Senior inspector of tax collection unit, Orkhon province tax office
41	Altantsetseg.D	Senior inspector of tax collection unit, Govisumber province tax office
42	Altantsetseg.D	Senior inspector of tax collection unit, Bagakhangai district tax office
43	Altankhorol.O	Senior inspector of Tax collection administration and methodology department, GDT
44	Tungalag.D	Senior inspector of TCAMD, GDT
45	Altantsetseg.Ts	Inspector of TCAMD, GDT
46	Bud.E	Inspector of TCAMD, GDT
47	Enkhjargal.Sh	Inspector of TCAMD, GDT
48	Jamsranjav.D	Inspector of TCAMD, GDT
49	Gansukh.G	Inspector of TCAMD, GDT
50	Myagmargjav.R	Inspector of TCAMD, GDT



JCC MM

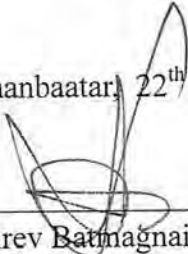
MINUTES OF MEETINGS BETWEEN  
JAPAN INTERNATIONAL COOPERATION AGENCY  
AND  
THE GENERAL DEPARTMENT OF TAXATION OF MONGOLIA  
AT  
THE SECOND JOINT COORDINATING COMMITTEE MEETING  
FOR  
THE PROJECT FOR THE ENHANCING TAX COLLECTION  
OPERATION AND INTERNATIONAL TAX ISSUES OF MONGOLIAN  
TAX ADMINISTRATION


The Joint Coordinating Committee (hereinafter referred to as "JCC") was organized between the Japan International Cooperation Agency (hereinafter referred to as "JICA") and the General Department of Taxation of Mongolia (hereinafter referred to as "GDT") regarding the Project for the Enhancing Tax Collection Operations and Resolving International Tax Issues in Mongolian Tax Administration (hereinafter referred to as "the Project").

JICA and GDT confirmed their mutual understanding and matters agreed to in the discussions attached hereto.

Ulaanbaatar, 22<sup>th</sup> October, 2014

  
\_\_\_\_\_  
Mr. Atsumu Iwai  
Senior Representative  
JICA Mongolia Office  
Japan International Cooperation Agency  
Japan

  
\_\_\_\_\_  
Mr. Tunrev Batmagnai  
Commissioner  
General Department of Taxation  
Mongolia

  
\_\_\_\_\_  
Mr. Kenichiro Iwashita  
Chief Advisor of the Project for the  
Enhancing Tax Collection Operation and  
International Tax Issues of Mongolian Tax  
Administration

## I. INTRODUCTION

The First JCC meeting was held with the aim of discussing and approving the Work Plan for Year 1 on March 4<sup>th</sup> 2014. This Second JCC meeting was held for discussing and approving the Work Plan for Year 2.

## II. SPECIFIC ISSUES CONFIRMED ON THE PROJECT

### 1. The Work Plan

The contents of the Work Plan were agreed upon and accepted at the meeting. Both sides agreed there were no revisions to PDM and PO as attached (ANNEX III and IV).

### 2. Project execution

Project execution was explained with Progress of activities (ANNEX I). Both sides shared the status of the project.

## III. OTHER ITEMS OF DISCUSSION

1. GDT is currently planning organizational reforms in order to facilitate international taxation.

GDT has requested JICA to provide information that could be useful for these organizational reforms in Mongolia.

For example, how organizations related to international taxation are organized in Japan, what sort of regulations is related to these organizations, or how work jurisdiction is managed.

2. JICA informed GDT that the Country Focus Training will be conducted in the middle of February 2015. JICA requested that the participants should be selected by middle of December 2014. GDT agreed to this.

3. Even though GDT is currently preparing TP regulations, the MOF is to be involved with the creation of laws and regulations.

Therefore JICA has asked MOF personnel to take part in the JICA expert seminars and requested them to share their knowledge in Mongolia.

4. JICA showed concern that the officials who are not selected as core staff will be discouraged. For taking care of them, they are expected to participate other training opportunities in Mongolia. Both sides agreed to this point.

5. GDT has requested the seminars in Mongolia conducted by NTA staff should address tax collections field, too. JICA has asked the GDT to submit the wish list of the contents, as soon as it is determined. JICA has agreed to pass on this request to the NTA. After identifying the contents, NTA will examine the possibility of a seminar. The timing of the seminar will be fixed upon NTA staff availability.

6. The 2014 Update of the OECD Model Tax Convention has been published. Since the Mongolian translation is of the previous edition, GDT requested that it be re-translated and printed to reflect the 2014 Update. JICA has agreed to this request.

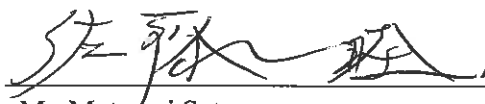
ANNEX I.	Progress of Activities
ANNEX II.	Work Plan
ANNEX III.	Project Design Matrix (PDM)
ANNEX IV.	Plan of Operations (PO)
ANNEX V.	List of Participants

MINUTES OF MEETINGS BETWEEN  
JAPAN INTERNATIONAL COOPERATION AGENCY  
AND  
THE GENERAL DEPARTMENT OF TAXATION OF MONGOLIA  
AT  
THE THIRD JOINT COORDINATING COMMITTEE MEETING  
FOR  
THE PROJECT FOR THE ENHANCING TAX COLLECTION  
OPERATION AND INTERNATIONAL TAX ISSUES OF MONGOLIAN  
TAX ADMINISTRATION

The Joint Coordinating Committee (hereinafter referred to as "JCC") was organized between the Japan International Cooperation Agency (hereinafter referred to as "JICA") and the General Department of Taxation of Mongolia (hereinafter referred to as "GDT") regarding the Project for the Enhancing Tax Collection Operations and Resolving International Tax Issues in Mongolian Tax Administration (hereinafter referred to as "the Project").

JICA and GDT confirmed their mutual understanding and matters agreed to in the discussions attached hereto.


Ulaanbaatar, 25<sup>th</sup> June, 2015



Mr. Mutsumi Sato  
Chief Representative JICA Mongolia  
Office  
Japan International Cooperation Agency  
Japan



Mr. Baldanjav Ariunsan  
Commissioner  
General Department of Taxation  
Mongolia



Mr. Kenichiro Iwashita  
Chief Advisor of the Project for the  
Enhancing Tax Collection Operation and  
International Tax Issues of Mongolian Tax  
Administration

## I. INTRODUCTION

The First JCC meeting was held with the aim of discussing and approving the Work Plan for Year 1 on March 4<sup>th</sup> 2014. The Second JCC meeting was held for discussing and approving the Work Plan for Year 2. The Third JCC meeting was held for sharing the status of the project.

## II. SPECIFIC ISSUES CONFIRMED ON THE PROJECT

### 1. Project execution

Project execution was explained with Progress of activities (ANNEX I). Both sides shared the status of the project.

### 2. PDM and PO

Both sides agreed there were no revisions to PDM and PO as attached (ANNEX II and III).

## III. OTHER ITEMS OF DISCUSSION

1. Mongolia is considering adoption of the bill for self-enforcement. The development of notifications is required for adoption of this bill, for enforcement. This situation is why the following additional support has been requested to JICA.

- Preparation of an official notification in line with the self-enforcement bill adoption.

Additionally, the following additional support is requested following adoption of the bill.

- Support for training personnel in line with the introduction of the self-enforcement system.

- Measures for protecting taxpayers in line with the introduction of this system.

- Ensuring both related parties and taxpayers are aware of this matter.

JICA noted that it is important to have the understanding of related organizations when moving ahead with the adoption of this bill.

Building on this, JICA stated that it would respond at a later date after carefully scrutinizing and considering the details of its support. The response will be after the adoption of related laws.

  
R, 2

2. GDT requested the Phase 2 project following this project. This is to include further training for personnel in the field of international taxation as well as the development of laws and regulations in this field. It will also include support for increasing internal work efficiency, and the establishment and implementation of self-enforcement in the field of tax collections.

3. GDT requested additional copies of the translation of the OECD Model Tax Convention as well as the case studies for transfer price taxation, to which JICA agreed.

4. JICA proposed that GDT establish a medium-term improvement plan. GDT responded that they would consider this proposal.

5. JICA proposed making use of tax accountants to deal with the increase in work due to the increase in the number of taxpayers. JICA also proposed awareness-raising activities for tax accountants, covering issues such as the tax code amendments.

GDT has decided to request advice from the JICA Project Team regarding specific details of how to make use of them.

ANNEX I.	Progress of Activities
ANNEX II.	Project Design Matrix (PDM)
ANNEX III.	Plan of Operations (PO)
ANNEX IV.	List of Participants



K. I.

資機材



## 資機材

2014年12月16日下記の機材がGDTに引き渡された。催告センター整備のための機材である。

No		数量
1、2	サーバー	2
3	ルーター	1
4	パソコン	8
5、6	PBX (ヘッドセット付)	1(8)
7	スイッチ	1
8	プリンター	1
9	コピー機	1
10、11、12	机、椅子	各9
13	キャビネット	1
14	クローゼット	2
15	ハンガー	1

**Тоног төхөөрөмжийн нийлүүлэлт**  
(Supply of the equipment)

**Тоног төхөөрөмжийн худалдан авалт: Татварын Ерөнхий Газрын Өр дуудах төвд шаардлагатай  
тоног төхөөрөмжийн худалдан авалт**

(Procurement title: Purchase of necessary equipments for Call center at General Department of Taxation, Mongolia)

2014.12.26

Д/Д	Тоног төхөөрөмжийн нэр (Item)	Тоо (Qty)	Ам доллар (USD)	Монгол банкны ханш (Official Exchange rates of the Bank of Mongolia) 2014.12.25	Нэгжийн үнэ (Unit price)	Нийт үнэ (Total)
1	Сервер 1 (Server 1)	1	16,500.00	1,881.02	31,036,830.0	31,036,830.0
2	Сервер 2 (Server 2)	1	14,500.00	1,881.02	27,274,790.0	27,274,790.0
3	Рүүгер (Router)	1	5,650.00	1,881.02	10,627,763.0	10,627,763.0
4	Ширээний компьютер DELL (Desktop computer)	8	14,080.00	1,881.02	3,310,595.2	26,484,761.6
5	Тоон холбооны цогц систем (PBX)	1	22,660.00	1,881.02	42,623,913.2	42,623,913.2
6	Чихэвч (Headset)	8	160.00	1,881.02	37,620.4	300,963.2
7	Свич -48- port (Switch)	1	6,100.00	1,881.02	11,474,222.0	11,474,222.0
8	Принтер CE285A, -HP-M1132MFP (Printer)	1	190.00	1,881.02	357,393.8	357,393.8
9	Хувилах машин Canon (Copy machine)	1	1,900.00	1,881.02	3,573,938.0	3,573,938.0
10	Ширээ хоорондын хаалттай 4 ширээ (ширээ тус бүр жижиг шүүгээ болон процессорын тавиуртай) 2 сөг-ээр (Desk (with separator))	8	1760.00	1,881.02	413,824.4	3,310,595.2
11	Салангад том ширээ (жижиг шүүгээтэй) Хүрэн өнгөтэй (Separated desk)	1	250.00	1,881.02	470,255.0	470,255.0
12	Саандал (Chair)	9	960.00	1,881.02	200,642.13	1,805,779.2
13	Файл хадгалах шүүгээ- Шилэн нүүртэй хүрэн (Cabinet for filing)	1	1,800.00	1,881.02	3,385,836.0	3,385,836.0
14	4 хүний багтаамжтай хувцасны шүүгээ- Модон хаалгатай (Closet)	2	2,400.00	1,881.02	2,257,224.0	4,514,448.0
15	Хувцасны босоо өлгүүр-Хүрэн (Coat hanger)	1	50.00	1,881.02	94,051.0	94,051.0
	<b>НИЙТ (Total)</b>	<b>44</b>	<b>88,960.00</b>	<b>1,881.02</b>	<b>137,138,898.2</b>	<b>167,335,539.2</b>

Хүлээлгэн өгсөн:  
(For the Supplier)


"Монголын Татварын Албаны татвар хураалтын үйл  
ажиллагаа болон олон улсын татварын асуудлыг  
боловсронгуй болгох төсөл"-ийг төлөөлж

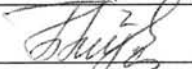
(For "The project for enhance tax collection operation and  
international tax issues of Mongolia tax administration in  
Mongolia")


  
С. Нармандах /Төслийн мэргэжилтэн/  
(S.Narmandakh /Project expert/)

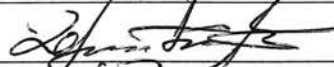
Хүлээн авсан:  
(For the End-User)

Татварын Ерөнхий Газар  
(General Department of Taxation)

  
Х. Батбаяр /Мэдээлэл Технологийн төвийн дарга/  
(Kh.Batbayar /Head, Information technology center/)

  
Д. Тунгалагтуяа /Санхүү хөрөнгө оруулалтын хэлтсийн дарга/  
(D.Tungalagtuya /Head, Finance and investment division/)

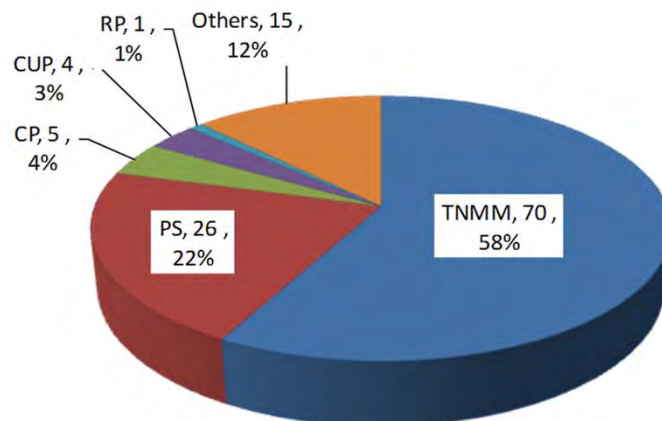
  
Д. Энхнасан /Нягтлан бодогч/ (D.Enkhnasan /Accountant/)

  
Ч. Оюунбаатар /Аж ахуйн ажилтан/  
(Ch.Oyunbaatar /Book keeper/)

研修教材(専門家作成分)

# TP case study

Transfer pricing method usage (2011)



## Japanese TPM in the tax law

- CUP      The Special Taxation Measures Law
  - RP        The Special Taxation Measures Law
  - CP        The Special Taxation Measures Law
  - **The STM law refers to the other method in the Regulation.**
- (Other method)
- TNMM    Enforcement order (Regulation)
  - PS        Enforcement order (Regulation)
  - RPSM    Enforcement order (Regulation)

## Mongolian TPM in the tax law

- **CUP**      Finance Minister's decree
- **RP**        Finance Minister's decree
- **CP**        Finance Minister's decree

- TNMM
- PS
- RPSM

**The General Department of Taxation is now making the Regulation on all the TPM including TNMM, PS, and RPSM.**

## Official in charge of TP and others (TH, etc)

	BY 2003	BY 2004	BY 2005
Transfer Pricing	74	86	100
Others	110	125	135
Total	184	211	235

## Advance Pricing Arrangement (APA) Trends

	BY 2010	BY 2011	BY 2012
Number of requests	111	103	127
Number of closed cases	115	101	138

## Transfer Pricing Taxation Trends

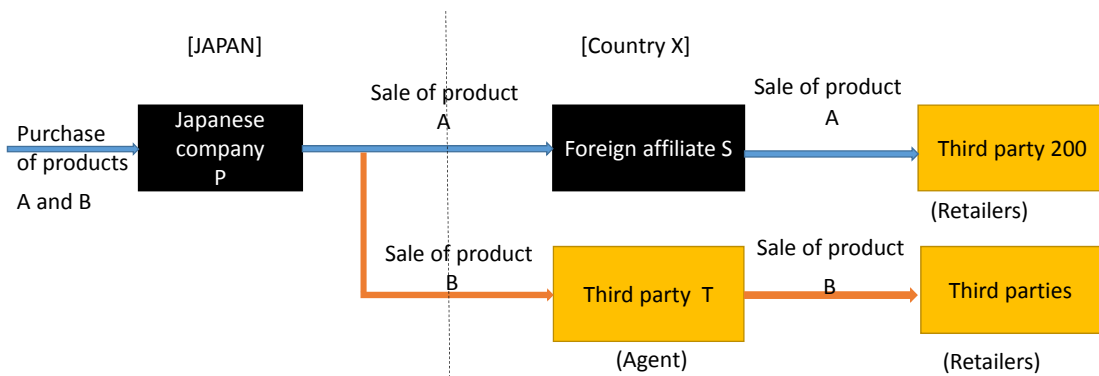
	BY 2011	BY 2011	BY 2012
Number of unrecorded cases	146	182	222
Amount of additional income (Billion yen)	69.8	83.7	97.4

## Income Statement (Simplified)

Components	Amounts	T/P
Sales Income	100	
Cost of Sales	▲ 80	
<b>Gross Margin</b>	20	⇒ CUP, RP, CP
Sales & General Administration Expenses	▲ 15	
<b>Operating (Net) Margin</b>	5	⇒ TNMM, PS

# Case 1

[Schematic of business relations]



## Business summary

- Japanese company P is a distributor of product A and product B, and 10 years previously, it established company S in country X as a subsidiary, to sell product A.



## Summary of transactions

- Company P sells product A to company S, which is then sells it to approximately 200 third-party retailers in country X.
- Company P has sold product B to third party agent T in country X since company S's establishment, and company T then sells the product to retailers in country X.
- At company P, product B is classified as a different product (i.e. has a different model number) from product A, but the two are similar in terms of properties, construction, functions, and so forth.

## Functions and activities

- The function performed by company P in the sale of product A to company S and sale of product B to company T (hereinafter referred to as the "two transactions" ) is that of purchase of inventories of product A and product B, and the sale of these inventories to company S and company T. Company P engages in no original activities, and there are no differences between the two transactions in function.
- In neither case are trademarks or other such properties used.

## Terms of contracts

- The two transactions are in the same phase of the transactional chain (e.g., retail or wholesale) and substantially the same in volume.
- The terms of the contracts for the two transactions (e.g., delivery terms, payment terms, product warranties, and the conditions for returns) are also, with the exception of the transaction price, the same.

## Treatment for the purpose of TP taxation

- **Consideration of the applicability of TPM**
- Product A and product B are found to be the same type of product on terms of properties, construction, functions and so forth, despite being classified into different product categories at company P.
- Both company S and company T are wholesale traders selling products to retailers in country X, and there is found to be no difference in the phase of the transactional chain between the two transactions.

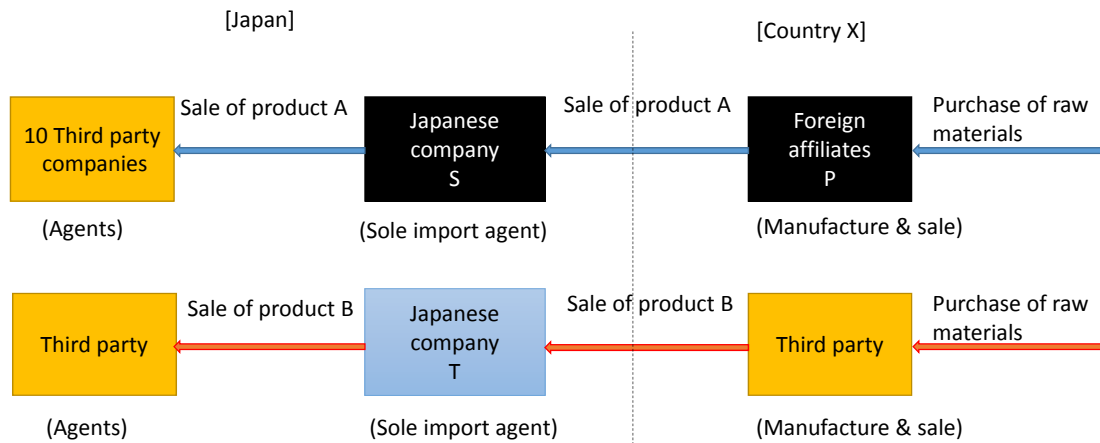
- The two transactions are substantially the same in volume and also the same as regards the terms and conditions of contracts, and no differences are found in the volumes and contract terms and conditions of the transactions.
- No differences are found in company P's business strategies toward product A and product B.
- No differences are found in the role and functions of company P in the two transactions, and no use is made of intangible property.
- As both company S and T are corporations located in country X, the market conditions are the same, and there are no government regulations on either product A and product B.

## Selection of TPM

- What is the most appropriate TPM in this case?
- Could you tell us the reason why you assert so?
- The TPM you insist on is in your tax law ?
- In actual audit, what is your difficulties ?
- How can you get the information on TP from the taxpayers ?

## Case 2

[Schematic of business relations]



## Business summary

- Japanese company S is a distributor of product A in Japan. Company P in country X, which is company S's parent company, manufactures and sells product A in country X.

## Summary of transactions

- Company S, as company P's exclusive selling agent, imports product A and sells it to a dozen or so third party agents in Japan.

## Functions and activities

- Company S does not engage in unique or original advertising or sales promotion activities, and makes no use of its own trade marks or other such properties in its sales activities.

## Japanese market conditions 1

- A dozen or so foreign manufacturers making products that compete with product A have entered the Japanese market. Five of the exclusive sales agents for these foreign manufacturers file securities reports that are openly accessible, and other information is also available, including information from the companies' websites analyses published by market research companies.

## Japanese market condition 2

- Following examinations of these materials, it is found that the company T is a reseller of products imported from a third party foreign manufacturer to a third party agents in Japan, and that it does not engaged in any other business.

## Japanese market condition 3

- Product B, which is sold by company T, bears a strong similarity to product A in terms of its properties, construction, and functions, and it is also found that company T is largely the same as company S in terms of volume of sales, phase of transactional chain, and sales functions (e.g., advertising, sales promotions, after-sales service, packing and delivery).
- Company T is also found not to use its own trade marks or other such properties in its such activities.

## Treatment for the purpose of TP taxation

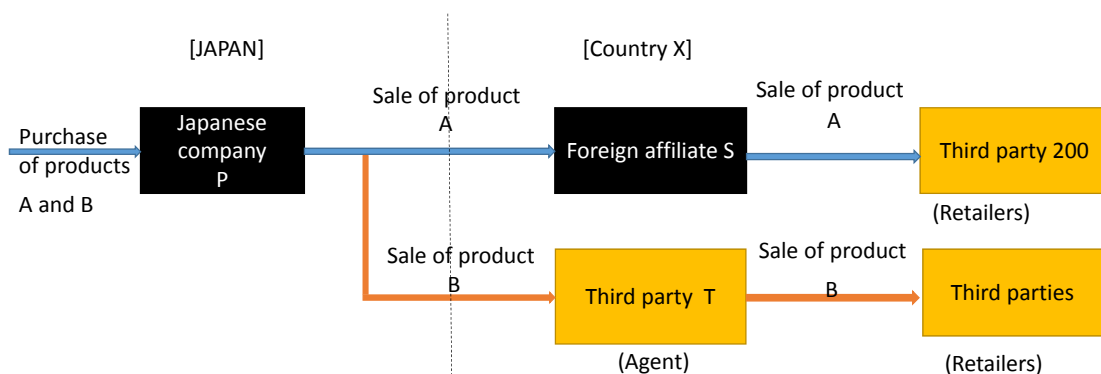
- **Consideration of the applicability of TPM**
- Company S resells to third parties the product A that it purchases.
- It is also found that financial data is obtainable from publicly available information on company T.
- Product B, which is imported from a third party and sold to agents in Japan by company T, bears a strong similarity to product A. Company T is also found to be generally similar to company S in terms of its function as a reseller, the scale of its transactions, market conditions, and so forth.

## Selection of TPM

- What is the most appropriate TPM in this case ?
- Could you tell us the reason why do you assert so ?
- The TPM you insist on is in your tax law ?
- In actual audit, what is your difficulties ?
- How can you get the information on TP from the taxpayers ?

## Case 3

[Schematic of business relations]





## Business summary

- Japanese company P is a distributor of product A and product B, and 10 years previously it established company S in country X as a subsidiary to sell product A.

## Summary of transactions

- Company P sells product A to company S, which then sells it to around 200 third-party retailers in country X.
- In conjunction with having established company S, company P sells product B to agent T, which is a third party in country X, and company T sells this to retailers in country X. Product B differs somewhat from product A in its specifications, but the two products are similar in terms of their properties, construction, functions, and so forth.
- The volume of product A sold by company P to company S and the volume of product B sold by company P to company T are about the same.

## Functions and activities

- The functions performed by company P is that the purchasing inventories of product A and product B, which it sells to company S and company T. However, company P does not appear to engage in original activities, and does not use trade marks or other such properties.
- There are no differences in the functions performed by company P in the sales transactions with company S, and the sales transactions with company T.

## Terms of contract

- The terms and of the contracts for the sale of product A by company P to company S and product B by company P to company T(e.g., delivery terms, payment terms, product warranties, and conditions for returns) are, with the exception of the transaction price, the same.

## Treatment for the purpose of TP taxation

- **Consideration of the applicability of TPM**

- Product A and product B have similar properties, construction, functions and so forth, and are found to be similar inventory assets.
- Company S and company T are both wholesale traders selling products to retailers in country X, and no difference is found in the phase of the transactional chain regarding sales to company S and sales to company T by company P (hereinafter referred to as the “two transactions”).

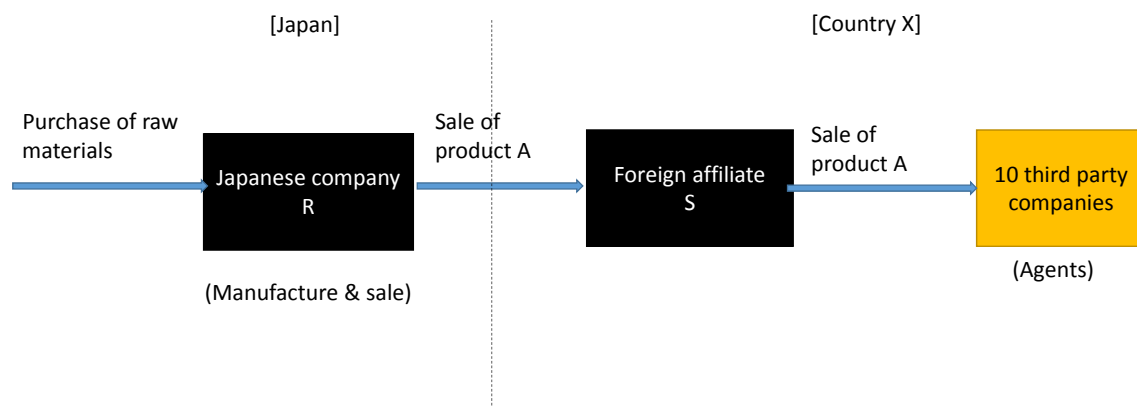
- The two transactions are substantially the same in volume and also the same in regards to the terms and conditions of the contracts, and no differences are found in the volumes and terms and conditions of the contracts for the transactions.
- No differences are found in company P’s business strategies toward product A and product B.
- No differences are found in the role and functions of company P in the two transactions, and no use is made of intangible property.
- As both company S and company T are corporations located in country X, the market conditions are the same, and there are no government regulations on either product A or product B.

## Selection of TPM

- What is the most appropriate TPM in this case?
- Could you tell us the reason why you assert so ?
- The TPM you insist on is in your tax law ?
- In actual audit, what is your difficulties ?
- How can you get the information on TP from the taxpayers ?

## Case 4

[Schematic of business relations]



## Business summary

- Japanese company P is a manufacturer and distributor of product A, and 10 years previously it established company S in country X as a subsidiary to sell product A.
- Product A is manufactured using original technology and techniques developed as a result of R&D by company P.

## Summary of transactions

- Company P sells product A to company S, which sells it to a dozen or so third-party agents in country X.

## Functions and activities

- Company S does not engage in any original advertising or sales promotion activities.

## Other conditions

- Under the system for disclosure of corporate financial data in country X, entry of cost items is not required. (However, an item corresponding to operating income in Japan is disclosed in reports.

## Treatment for the purpose of TP taxation

- **Consideration of the applicability of TPM**

**(R&D)**

- Product A sold by company P to company S is a product manufactured using original technology and techniques developed as a result of R&D by company P, and it is not possible to find comparable transactions from the available data for applying the CUP method or CP method to company P.

## Advertising & sales (intangible asset?)

- Company S is not found to engage in original advertising or sales promotion activities, and is found to have no intangible property that serves as a source of income.

## No comparable transactions on RP method ?

- As it is not possible to ascertain gross profit on sales or the cost of sales from publicly available information in country X, and the information needed to adjust for differences affecting gross profit margin is unobtainable, no comparable transactions can be found for applying the RP method to company S.

## Operating Margin Base

- As it is possible to identify comparable transactions for company S from publicly available information based on the operating margin.

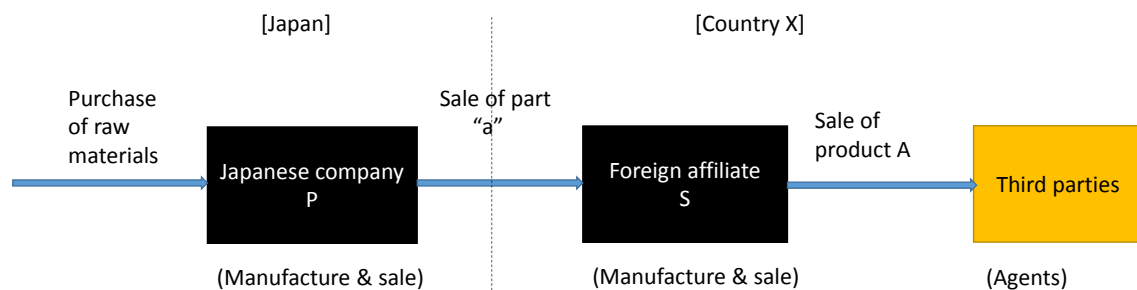


## Selection of TPM

- What is the most appropriate TPM in this case ?
- Could you tell us the reason why you assert so ?
- The TPM you insist on is in your tax law ?
- In actual audit, what is your difficulties ?
- How can you get the information on TP from the taxpayers ?

## Case 5

[Schematic of business relations]



## Business summary

- Japanese company P is a manufacturer and distributor of product A, and 10 years previously it established company S in country X as a manufacturing and sales subsidiary.

## Summary of transactions

- Company P sells part “a” for product A to company S, and company S combines part “a” with other parts to produce product A, which it sells to third-party agents in country X.

## Functions and activities

- Company S has no R&D divisions, does not engage in original advertising or sales promotion activities, and does not use its own trade mark or other properties in its sales activities.

## Other conditions

- Company S sells product A to third-parties in country X. However, products similar to product A are also manufactured and sold by two other corporations in country X (manufacturing subsidiaries whose parent companies are located outside X; hereinafter referred to as the “other two companies”).
- Consequently, these three companies have maintained an oligopoly on the market in country X.

- Product A has an equal market share with the similar products of the other two companies, and is almost the same as the similar products of the other two companies in terms of product performance and price.
- Even in Japan, there is only one corporation manufacturing and selling a product similar to company P's product A, and transactions involving it are all controlled transaction.

## Treatment for the purpose of TP

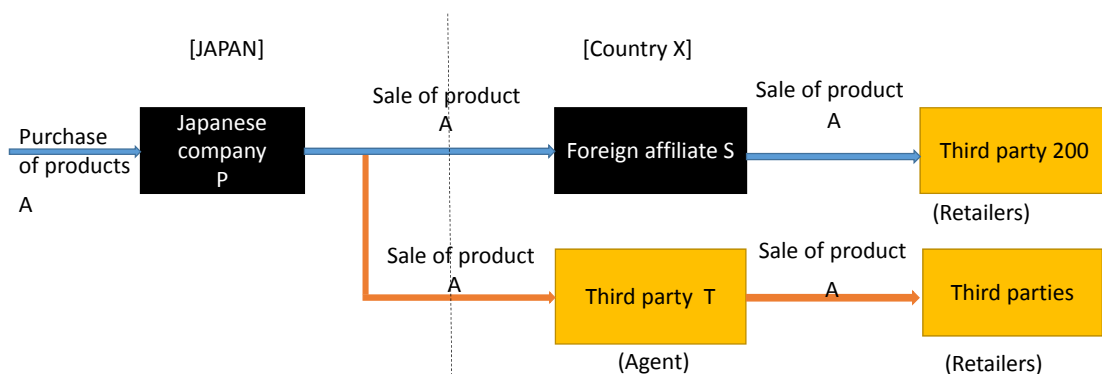
- **Consideration of the applicability of TPM**
- Regarding company P, there is only one corporation manufacturing and selling a product similar to product A in Japan, and the transactions involving it are all controlled transactions. It is therefore not possible to identify comparable transactions.

## Selection of TPM

- What is the most appropriate TPM in this case?
- Could you tell us the reason why you assert so ?
- The TPM you insist on is in your tax law ?
- In actual audit, what is your difficulties ?
- How can you get the information on TP from the taxpayers ?

## Case 7

[Schematic of business relations]



## Business summary

- Japanese company P is a distributor of product A, and 10 years previously it established company S in country X as a subsidiary to sell product A.

## Summary of transactions

- Company P sells product A to company S, which then sells its purchases of product A to approximately 200 third-party retailers in country X.
- As company P sold product A through third-party agent T in country X before company S's establishment, it has two sales channels in country X: through company S, and through company T.
- Company P's transactions with company S and with company T are almost the same in terms of the phase of the transactional chain, volume, and terms, except in the following respects.

- 1. Whereas the delivery terms for transactions with company S are CIF (price including cost, insurance, and freight), transactions with company T are FOB (free on board).
- 2. whereas the payment period for transactions with company S is 30days, it is 90 days for transactions with company T. (The usance rate in both cases is 5%)
- NOTE: Usance rate rate charged for credit

## Transfer pricing solution

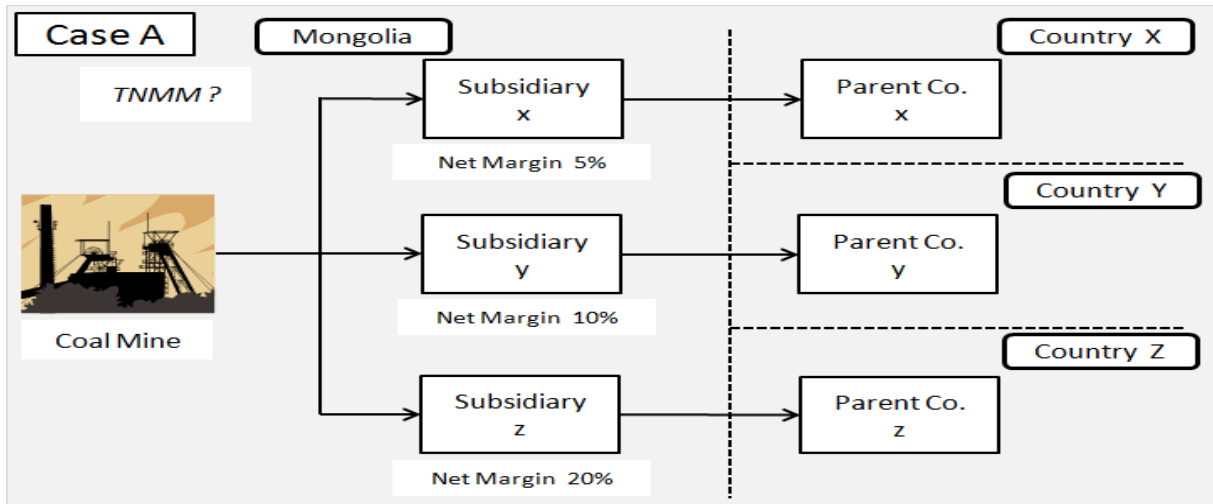
- Since in this case company P sells product to company S and also sells an identical product A to a non-affiliate T, despite some differences in the delivery terms and other areas, the two transactions are highly comparable, one option is to apply the CUP method after adjusting for the differences.
- Although differences in 1.the delivery terms and 2. the settlement terms are found to have an impact on the prices of both transactions, it is possible

- Although differences in 1.the delivery terms and 2. the settlement terms are found to have an impact on the prices of both transactions, it is possible to adjust for the difference by, in the case of 1., adding freight and insurance premiums to the transaction price with company T (company T purchase price + insurance premiums), and, in the case of 2. recalculating the interest component of the transaction with company T to match the terms for company S (company T purchase price  $\div \{1 + 0.05 \times (90 \text{days} / 365 \text{days})\} \times \{1 + 0.05 \times (30 \text{days} / 365 \text{days})\}$ ).

- In this case, the consideration for the sale of product A by company P to company T after adjusting for this difference is the arm's length price.



## 対外国取引の場合(鉱業部門) Outbound Case (Mining Sector)

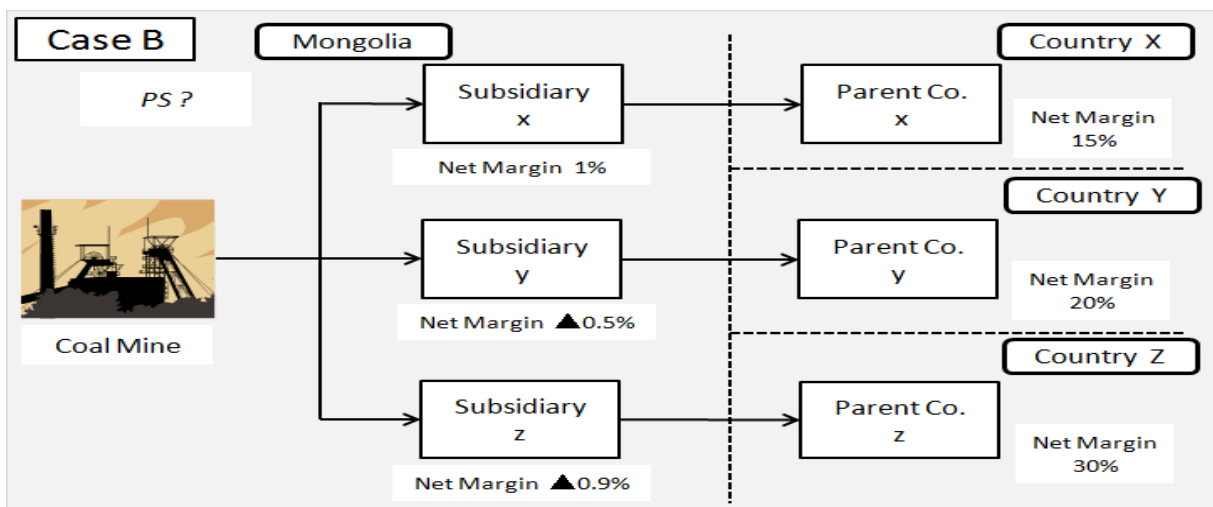


9-11, April, 2014

Case Study and Suggested Administrative Goals on Transfer Pricing

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## 対外国取引の場合(鉱業部門) Outbound Case (Mining Sector)

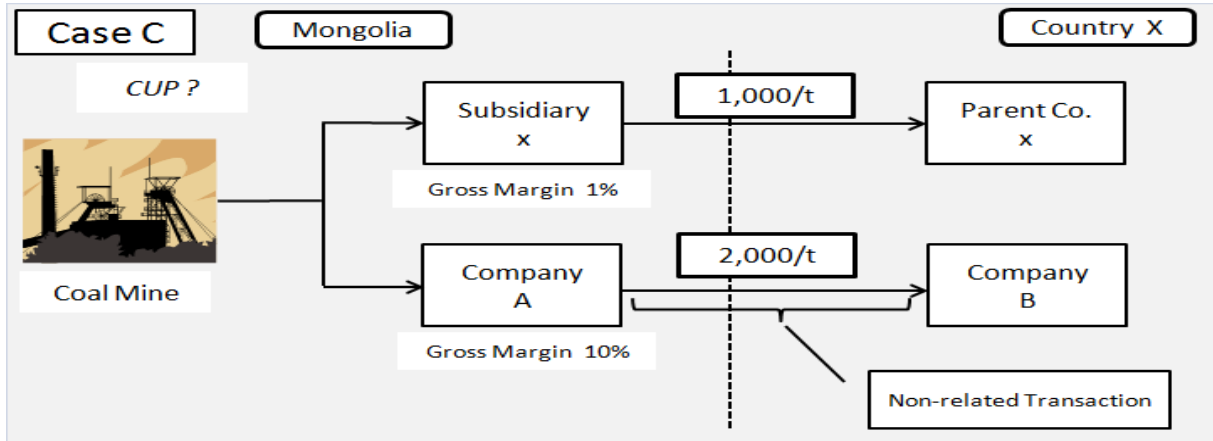


9-11, April, 2014

Case Study and Suggested Administrative Goals on Transfer Pricing

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## 対外国向取引の場合(鉱業部門) Outbound Case (Mining Sector)

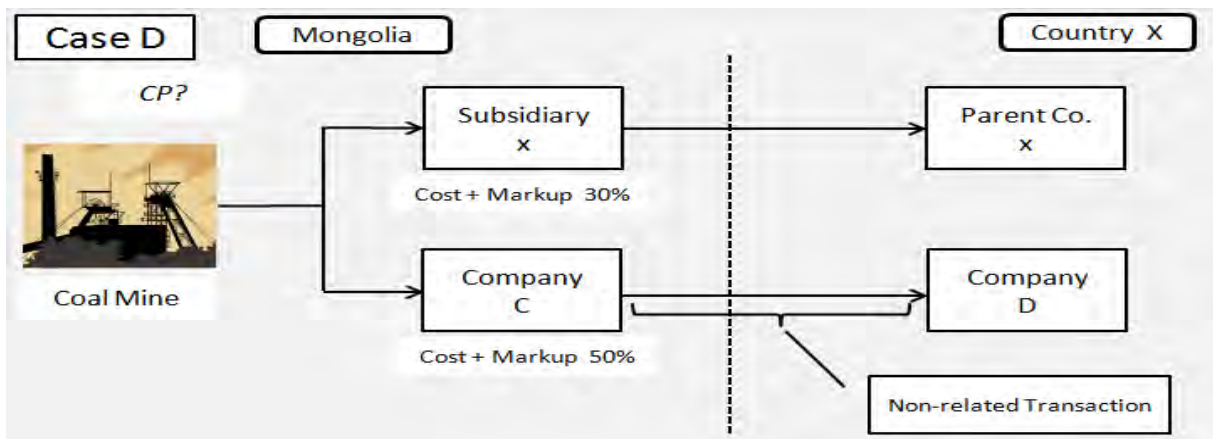


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## 対外国向取引の場合(鉱業部門) Outbound Case (Mining Sector)



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## Selecting comparable transactions

The most important point is whether the tax inspector can select the comparable corporations at the time of TP audit.

As soon as possible, the tax inspector should find out the appropriate Comparables !!!

### [Selecting process of comparable corporations]

Transactions found to be comparable transactions

Uncontrolled transactions

Availability of Data

The corporation or foreign affiliate's materials on the transactions (internal information)

Databases of corporate data (external information)

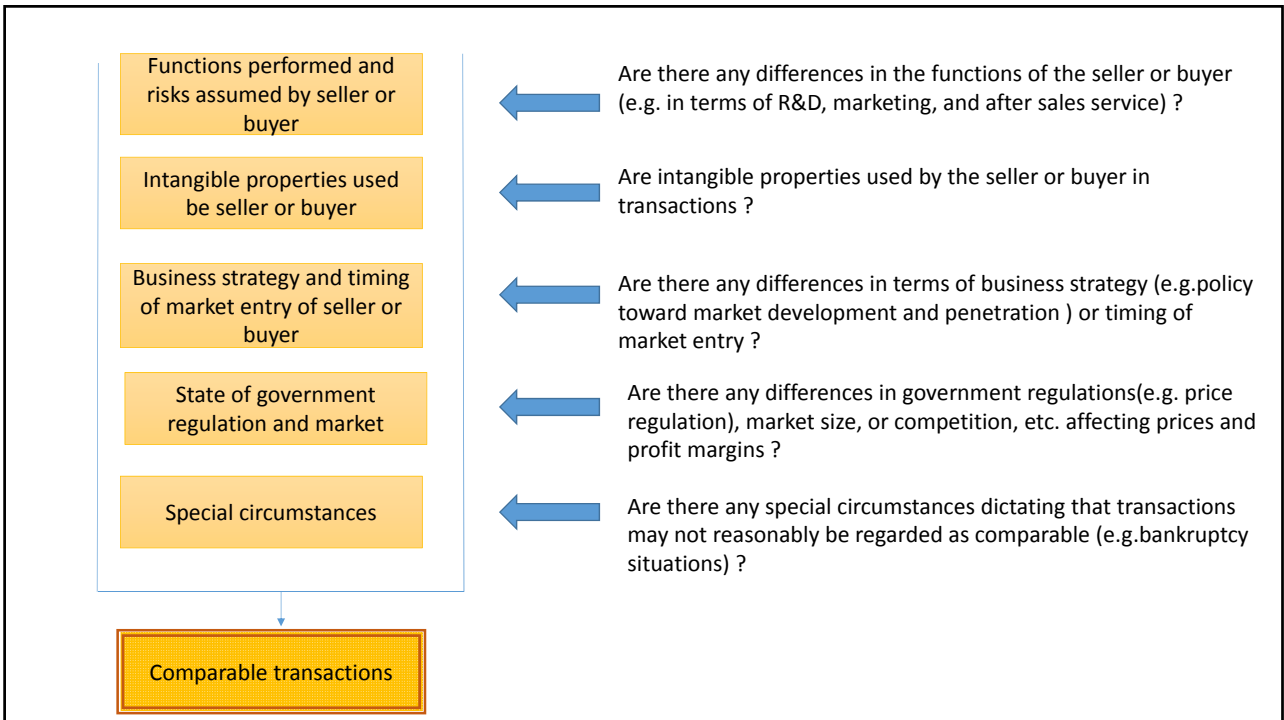
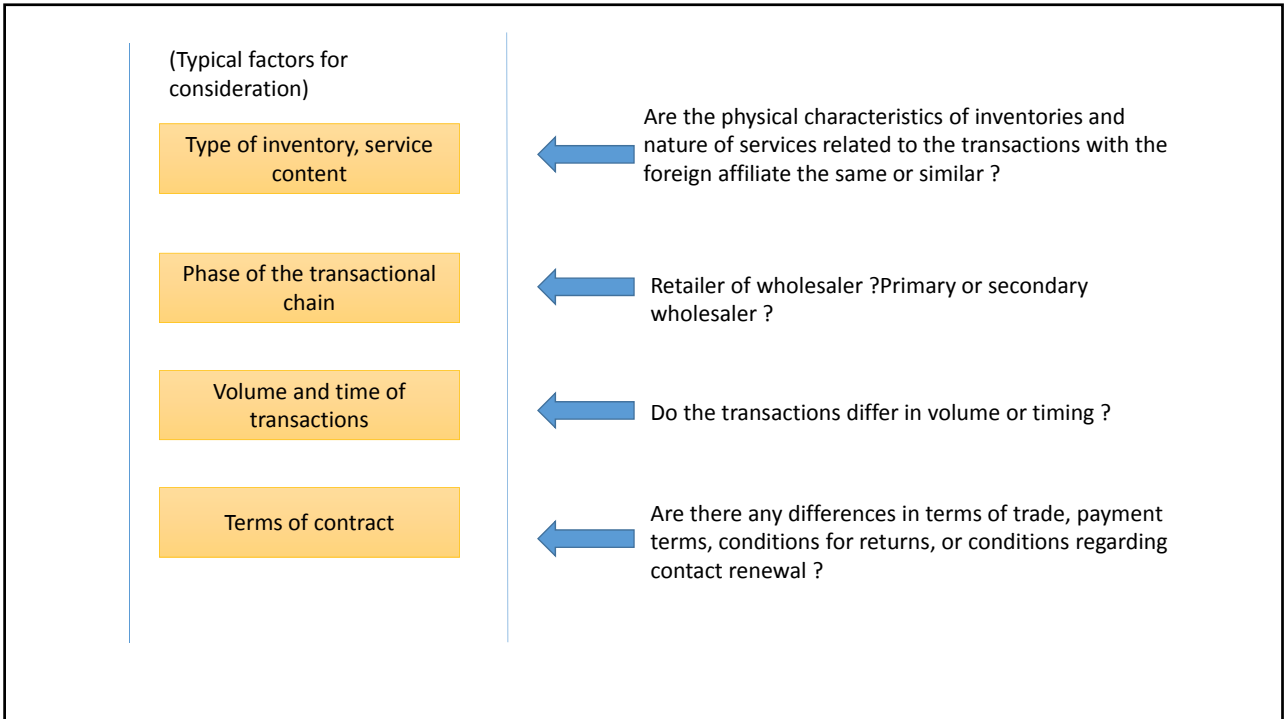
Industry information from business association(external information)

Other information(external information)

Information obtained from questioning and inspections of other companies in same line of business pursuant to Article 66-4, paragraph 9 of Special Measures Law(external information)

Are the transactions between non-affiliates ?

Are price data or data for calculating the profit margin available for each transaction ?



## Persuading the taxpayer on the information

- **The tax inspector has to persuade the taxpayer on getting the information as to the related company.**
- For instance, if you audit the Mongolian subsidiary, you absolutely has to demand the taxpayer to submit the information in terms of Foreign parent corporation's information on the financial data such as operating margin.
- In line with the OECD principle, the taxpayer should present TP related documentation.
- **The taxpayer knows very well about the OECD TP guideline.**

# OECD Model Tax Convention

## Object of OECD Model Convention

To provide a means of settling on a uniform basis the most common problems that arise in the field in international “juridical double taxation”.

How about “economic double taxation” in this convention?

## Historical background

- The origin of the OECD Model Tax Convention is the discussion of avoiding international double taxation started from 1921 in the League of Nations.
- Fiscal committee was set up in 1956 March in the OEEC founded in 1948.
- From 1958 to 1961, the committee prepared four interim Reports entitled Draft Double Taxation Convention in Income and Capital.
- OECD was established formally in 1961 September.
- OECD announced the OECD Model Tax Convention and its commentaries in 1977.
- In 1992, new Model Tax Convention was publicized adopting the contents of report made from 1977. Later it has been revised sometimes.

## Influence of the OECD Model Convention

Since 1963, the OECD Model Convention has had wide repercussions on the negotiation, application, and interpretation of tax conventions.

First, OECD member countries have largely conformed to the Model Convention when concluding or revising bilateral conventions.

Second, the impact of the Model Convention has extended far beyond the OECD area(non-member countries).

Third, the worldwide recognition of the provisions of the Model convention have helped make the Commentaries on the provisions of the Model Convention a widely-accepted guide to the interpretation and application of the provisions of existing bilateral conventions.

## Presentation of the Model Convention

### Title of the Model Convention

- From 1992 Model Convention, “the elimination of double taxation” in the title was not used.
- OECD Model Convention deals with the elimination of double taxation, the prevention of tax evasion and non-discrimination.

## Broad lines of the Model Convention

- Chapter I Scope (Persons & Taxes covered)
- Chapter II Defines some terms  
(Term, Resident, Permanent Establishment(PE))
- Chapter III Taxation of Income
- Chapter IV Taxation of Capital (Withholding taxation, etc.)
- Chapter V Elimination of international juridical double taxation
- Chapter VI Special Provisions (Mutual Agreement Procedure, etc.)
- Chapter VII Final Provisions



## Scope and definitions

- Article 1 The Convention applies to all persons who are residents.
- Article 2 It deals with taxes on income and on capital.

Chapter II defines some terms used in more than one Article of the Convention.

Other terms such as “dividends”, “interest”, “royalties” and “immovable property” are defined in the Articles that deals with these matters.

## Article 1 (Person covered )

The Convention shall apply to persons who are ( ) of one or both of the Contracting States.

Q How do you think about “Partnership”?

## Article 2 (Taxes covered)

### Purport

This article stipulates the kinds of taxes to clarify to be applied in this Model Convention.

The Model Convention shall apply to all the taxes to the income and property and to the local tax.

## Paragraph 1 of Article 2

This Convention apply to taxes on ( ) and ( ) imposed on behalf of a Contracting State of its political subdivisions or local authorities, irrespective of the manner in which they are levied.

## Paragraph 2 of Article 2

There shall be regarded as taxes on income and capital ( ) taxes imposed on total income, on total capital, or on elements of income or of capital,

including taxes on gains from the ( ) of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

## Article 3 (General Definitions)

Purport

This Article stipulates the general prescriptions needed to interpretation of the terminology used in this Convention.

## Paragraph 1 of Article 3

Important points

a) The term "person" includes as ( ), a ( ) and any other body of persons.

Q How about Partnership ?

e) The term "international traffic" means any transport by a ( ) or ( ) operated by an enterprise that has its place of ( ) management in a Contracting State

## Paragraph 2 of Article 3

### **The meaning of this Paragraph**

- In the case that the terminology is not defined in this Model Convention, the interpretation in the Contracting State shall be conferred.

But there are some exceptions. That is, if other interpretation should be anticipated by context, the Contracting State should follow the interpretation.

The context is such as the intention at the time of the signature of the treaty.

## Article 4 (Resident)

### **Purport**

This Model Convention shall apply to persons who are residents of one or both of the Contracting States.

So whether the residents or not is very crucial for the application of the tax treaty.

Article 4 stipulates clarifies the meaning of “resident of a Contracting State”, and aims at resolving the double taxation problem (furthermore double resident problem).

In the case of the conflict on the interpretation of the “resident” between the two contracting countries, this Article will be a special rule for the resolution.

## Paragraph 1 of Article 4 (1)

### **The preceding paragraph**

For the purpose of this Convention, the term “( ) of a Contracting State” means any person who, under the laws of that State is liable to tax therein by reason of his ( ), ( ), ( of ) or any other criterion of a similar nature, and also includes that State and any political subdivision or local authority thereof.

The criteria for “resident” is stipulated.

## Paragraph 1 of Article 4 (2)

### **The latter paragraph**

This term, however, does not include any person who is liable to tax in that state in respect only income from ( ) in that State or ( ) situated therein.

### **Comment on this latter paragraph**

For instance the foreign diplomats who offers their service in a Contracting State are applicable to this latter paragraph.

## Paragraph 2 of Article 2

This paragraph stipulates the dividing basis of resolving the “double resident” problem.

- a) permanent Home (1st Criteria)  
center of vital interest (2nd criteria)
- b) habitual abode
- c) Nationality
- d) Mutual Agreement Procedure

## Question on the paragraph 2 of Article 4

- Mr. Koderu has a Permanent Home in Japan. But he constructed new house in UB. Mr. Koderu's family is in Japan. And the properties are still in Japan. Recently he got new business in UB. In the near future, he will stay in UB much more rather than Japan.
- In this case, Mr. Koderu can be a resident in UB ?

## Paragraph 3 of Article 4

- Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident only of the State in which its place of ( ) ( ) is situated.
- Corporation criteria = place of effective management

- Article 5 Permanent Establishment

1. ••••, the term “Permanent Establishment” means a ( ) ( ) of ( ) through which the business of an enterprise is wholly or partly carried on.

## Purport of this Article 5

- Art. 7 incorporates the basic principle that unless an enterprise of a contracting state has a permanent establishment situated in the other state, the business profit of that enterprise may not be taxed by that other states.
- Art. 5 stipulates the definition of the “Permanent Establishment”.



- Article 5

2. The term “permanent establishment” includes especially:

a) a ( ) of ( )

b) a branch

c) an ( )

d) a ( )

e) a workshop, and

f) a ( ), an ( ) or ( ) well, a quarry or any other place of ( ) of natural resources.

- Article 5

3. A ( ) site or construction or ( ) project constitutes a “permanent establishment” only if it lasts more than ( ) months.

• Article 5

4. Notwithstanding the preceding provisions of this Article, the term “permanent establishment” shall be deemed not to include:

- a) the use of facilities solely for the purpose of ( ), ( ) or ( ) of goods merchandise belonging to the enterprise;
- b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of ( ), ( ) or ( ).
- c) the ( ) ••••solely for the purpose of ( ) by another enterprise.

Article 5

- 4. d) the ( ) of a fixed place of business solely for the purpose of ( ) goods or merchandise or of collecting ( ), for the enterprise.
- e) the ( ) of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a ( ) or ( ) character;
- f) the ( ) of a fixed place of business solely for any ( ) of activities mentioned in subparagraphs a) to e), provided that the overall activity of the fixed place of business resulting from this combination is of a ( ) or ( ) character.

- Article 5

5. ( ) the provisions of paragraphs 1 and 2, where a person – other than an agent of an ( ) status to whom paragraph 6 applies – is acting on behalf of enterprise and has, and ( ) exercises, in a Contracting State an authority to conclude contracts in the name of enterprises, that enterprise shall be deemed to have a ( ) in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a ( ) under the provisions of that paragraph.

- Article 5

6. An enterprise shall not be deemed to have a ( ) in a Contracting State merely because it carries on business in that State through a ( ), ( ) agent or any other agent of an ( ) status, provided that such persons are acting in the ordinary course of their business.

- Article 5

7. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State or which carries on business in that other State (whether through a ( ) or otherwise), shall not of itself constitute either company a ( ) of the other.

## Article 6 (Income from Immovable Property)

### Purport of Article 6

The contracting state in which the Immovable Property is situated has taxation right to the real estate.

Q 1 How about the income from the immovable property in the residence country ?

Q2 How about the income from the immovable property in the third county ?

## Paragraph 1 of Article 6 (Taxation Principle)

Income derived by a resident of a Contracting State from immovable property situated in the ( ) Contracting State may be taxed in that ( ) state.

- ★ This paragraph stipulates the taxation principle.  
That is, the source of the income from immovable property has always close relationship with the source county.

## Paragraph 2 of Article 6 (Definition of Immovable Property)

- Assets or Rights are Immovable Properties ?
- In order to avoid this problem, the OECD model convention defines the Immovable Property by referring to the law of the Contracting State in which the property is situated.
- But the convention shows the Assets and Rights corresponding to the Immovable Property for uniformization of the definition.
- Ships, boats, aircraft shall not be regarded as immovable property.

## Paragraph 3 of Article 6 (Use form of immovable property)

- Despite of the use form of immovable property, all the income derived from the use of immovable property shall be applied by the taxation principle of Paragraph.

## Paragraph 4 of Article 6 (Immovable property of an enterprise)

- Paragraph 4 clarifies that the country having the immovable property can impose the tax to the income derived from the immovable property of an enterprise.
- On the contrary, the income derived from the immovable property through Permanent Establishment (PE) shall be dealt as the Business income of Article 7.

## Article 7 (Business Profits)

Purport of Article 7

Article 7 stipulates about the Business Profits imposed by the other Contracting States in the case that a Contracting State carries on business in the other Contracting States.

Article 7 stipulates the crucial principle such as “Attributable Principle” and provides the allocation of taxing rights between the Contracting States.

Article 7 supplements Article 5(PE).

## Paragraph 1 of Article 7

- The 1st principle on the Business income is stipulated in paragraph 1.  
Without PE No taxation
- The 2nd principle  
Attributable Principle  
The other Contracting States can impose the income only to be attributable to the PE.

## Paragraph 2 of Article 7

- This paragraph 2 stipulates “Arm’s Length Principle” as well as Article 9 (Associated Enterprises).
- The income attributable to the Permanent Establishment shall be the income derived from the transaction with other separate and independent enterprises under the condition and the price in the common market.

## AOA principle adopted in the Para 2 of Art. 7

OECD issued the “Report on the Attribution of Profits to Permanent Establishments, 17 July 2008).

The Report concluded the fiction that the Permanent Establishment is a separate enterprise and that such enterprise is independent from the rest the enterprise of which it is a part as well as from any other person.

The underline part is called “AOA principle or AOA approach”.

This fiction is quoted in the Para. 16 of the Commentary of OECD Model Tax Convention.



## Commentary on Article 7

### Para. 2

- No 26. (Documentation)
- It is generally not intended that more burdensome documentation requirements be imposed in connection with such dealings than apply to transactions between associated enterprise.
- The arrangements documented in relation to the dealing, viewed in their entirety, do not differ from those which would have been adopted by comparable independent enterprises behaving in a commercially rational manner.

## Commentary on Art.7

### Para.2

- No.43(Purchasing activities)
- Indeed, if the purchasing activities were performed by an independent, the purchaser would be remunerated on an arm's length basis for its services.

## Commentary on Art.7

- Para.3
- No.59(Corresponding Adjustment)
- The corresponding adjustment is required only if the other state considers that the adjusted profits conform with paragraph2.

## Commentary on Art. 7

- Para. 3
- No.61(Secondary Adjustment)
- *What is "Secondary Adjustment" ?*
- Suppose the NTA levied the TP taxation to the corporation X, related corporation Y in country A was made the Correlative adjustment.
- The corporation Y will send its TP income to the corporation X in order to recover the situation as well as the Arm's Length Price transaction.
- The transfer of the income is called "Secondary Adjustment".

## Commentary on Art.7

Para.4

No.77

Before 2000, income from professional services and other activities of an independent character was dealt with under a separate Article, i.e. Article 14.

~

The effect of the deletion of Article 14 is that income derived from professional services or other activities of an independent character is now dealt with under Article 7 as business profits.

## Article 8 (Shipping, Inland Waterways Transport and Air transport)

- Purport
- Art.8 stipulates the exceptions of taxation of business profits provided for Art.7 in terms of the profits from Shipping, inland Waterways transport and Air transport.
- The provision is based on the principle that the taxing right shall be left to the Contracting State in which the place of effective management of the enterprise is situated(Para.1).

## Commentary on Art. 8

- Para.1
- No.2
- Such state as preferring to confer the taxing right on the state of residence are free to substitute a rule on the following lines.
- “Profits of an enterprise of a Contracting state from the operation of ships or aircraft in international traffic shall be taxable only in that state.”

## Commentary on Art.8

- Para.1
- No.3
- How should some other states preferring to use a combination of the residence criterion and the place of effective management criterion conduct ?
  - ↓
- So long as the state using the effective management criteria is able to tax the total profits of the enterprise, the primary right to tax is given to the state in which the place of effective management is situated.
- In that case the state of residence eliminates double taxation in accordance with Art.23.
- On the contrary, when the state of effective management is not able to tax total profits, the primary right to tax is given to the state of residence.

## Article 9 (Associated Enterprises)

- Purport
- Art.9 stipulates in the case that trade conditions are different from independent enterprises when the associated enterprises conduct the overseas transaction, an adjustment of taxable income can be made.
- Furthermore, Art.9 also stipulates an appropriate adjustment to the amount of tax charged on those profits to eliminate economic double taxation as a result of the adjustment of taxable income.

## Correlative Adjustment (Para.2 of Art.8)

- = Corresponding Adjustment

Y contracting state charged the tax to the profits to which X contracting state had already charged.

Between the X and Y countries, MAP(Mutual Agreement Procedure) discussion was held in line with the Arm's Length Principle stipulated in the Para.1 of Art.8.

In proportion to the agreement related to ALP of the MAP discussion, Y contracting state can charge the TP tax, and X contracting state has to reduce the income (correlative adjustment).

This correlative adjustment means avoiding the double taxation.

## Points of the Commentaries

- **Para. 1**
- **No2. (Open market commercial terms)**
- If the associated enterprises transactions were conducted based on normal open market commercial terms, calculation between the associated enterprises should not be modified.

- **Para.1**
- **(Thin capitalization)**
- **What is thin capitalization ?**
- **If parent corporation make a excessive loan to the subsidiary, international tax avoidance may occur in the subsidiary.**
- **So, in order to avoid the international tax avoidance, interest payment over three times a ratio of equity investment and loan cannot be deducted.**

**(No.3)**

**In the case of thin capitalization in terms of interest rate in the loan contract, Arm's Length Principle is applied.**

- Para.2
- No.5 and No.6
- Correlative Adjustment in order to relieve the double taxation is not automatically to be made.
- Only if the country which can conduct the correlative adjustment considers that the TP taxation by taxing country is justified both in Arm's Length Principle and suitable taxable amount.

Para.7

We have two types of the correlative adjustment such as reducing the taxable profit by an appropriate amount and tax credit under Art.23.

Para.8 (Secondary adjustment)

As a result of the correlative adjustment of the associated corporation Y, the adjustment of taxable income is over. However, the position(cash) is still in the associated corporation Y. In order to restore the same situation as conducting in line with Arm's Length Principle, the position is transferred from Y to the associated corporation X levied the TP taxation. This is Secondary adjustment.

## Article 10 (Dividends)

- Purport
- Dividend means the distribution of the profit by the corporation to the stockholder.
- From the view point of the stockholder, dividends means the income from the capital offered by the stockholders to the corporation.
- Article 10 stipulates how to distribute the taxing right to dividends as Investment income between the resident country and source country.

## Para.1 of Article 10(Resident country taxation)

Para.1 stipulates the taxation in the resident county.

That is, resident country where the person (company) receiving the dividends resides can levy the tax to the dividends.

However, all the source country do not always give up the taxing power.

So, this para. stipulates just that the resident country of the person receiving the dividends can levy the tax.

Therefore, this para. dose not permit the exclusive taxing power to the resident country.



## Para.1 of the Commentary

- No.8
- “It does not . . . . . apply to dividends paid by a company which is a residents of a Contracting state which are attributable to a permanent establishment(PE) which an enterprise of that state has in the other Contracting state.”
- In this case, Article 21(other income)is applied.

## Para.2 of Article 10(Source country taxation)

- Para.2
- “Such dividends may also be taxed in the contracting state of which the company paying the dividends is a resident and according to the laws of that state.”
- The source country can decide freely the way how to impose the tax such as withholding taxation or tax payment be self-assessment.
- Furthermore, in the resident country, foreign tax credit will be applied to the tax levied by the source country under Article 23.

## Para.4 of Article 10(Effectively connected with PE)

- In the case that the beneficial owner of the dividend has PE in the source country, the stocks resulting in dividends is effectively connected with PE, Article 10 shall not apply.
- In this case, Article 7(business profit) shall apply. The source country can levy the tax by considering the dividend as a part of a profit of the PE.

From withholding taxation in the source country to business income taxation to the PE

## Para.4 of the Commentary

- No.31
- Paragraph 4 is not based on such a conception which is sometimes referred to as “the force of attraction of the permanent establishment”.
- This commentary means if the beneficial owner in the other state has PE in a state (source country), the source country can levy the tax even if the dividends is not attributable to the PE.

## Question

- Taxpayer set up PE in the state which give preferential treatment to the dividend income for getting the advantage tax position and transferred the stocks to the PE.
  - This PE does not conduct any business.
  - Para.4 of Article 10 can be applied?
- (Please refer to the No.32 of the Commentary.)

## Article 11 (Interest)

- Purport
- As compromising solution, taxing power have been divided into both residence and source countries.
- That is, this convention recognizes the source country to levy the withholding tax under the tax law if the domestic law stipulates the taxation to interest.
- Source country can relinquish the taxing right.

## Japanese US tax treaty

- In the provisions in terms of interest, etc. , the treaty has Anti-Treaty Shopping Provisions.
- The person who received the interest through the conduit corporation can not be the beneficial owner in the treaty.

## Para.1 of Article 11 (Residence country Taxation)

A contracting state has a source of interest.

The interest is paid to the resident in the other Contracting State.

The residence country can levy the tax to the interest.

### **Question**

The interest is paid to the non resident in the other Contracting State. Art.11 can be applied?

## Para.2 of Article 11(Source country taxation)

- Commentary No.7 , 12, 13, 14 make comments as is the following:
- Para.2 reserves a right to tax interest to the state in which the interest arises; but limits the exercise of that right by determining a ceiling for the tax, which may not exceed 10%.
- This Para. lays down nothing about the mode of taxation in the State of source.
- It does not specify whether or not the relief in the State of source should be conditional upon the interest being subject to tax in the state of residence.
- The Article contains no provisions as to how the State of the beneficiary's residence should make allowance for the taxation in the State of source of the interest. The question is dealt with in Articles 23A and 23B.

## Para.3 of Article(Definition of Interest)

### **Including interest**

The term "interest" as used in this Article means income from debt-claims of every kind.

### **Not including interest**

Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

No.22 of the Commentary stipulates that even if they are determined pro rata tempore they constitute not so much income from capital as special form of compensation for the loss suffered by the creditor through the debtor's delay in meeting his obligations.

## Para.4 of Article 11(Effectively connected with PE)

- Purport (Para.4)
- Para.4 stipulates that if the beneficial owner has PE in the source country and debt-claims resulting in interest is effectively connected with PE, Article 11 shall not apply.
- In this case Article 7(Business Income) shall apply.
- Commentary No.24 stipulates that “the force of attraction of PE” is not adopted.  
→Attributable principle

## Para.5 of Article 11(Interest borne by PE)

No.26 of Commentary

[Principle]

State of source of the interest is the State of which the payer of the interest is a resident.

[Exception]

If the loan was contracted for the requirements of PE and interest is borne by the PE, the source of the interest is in the Contracting State in which the PE is situated.

## Para.6 of Article 11(Payment over Arm's Length Price)

- Purport
- The excess part of the interest shall remain taxable in case that interest paid exceeds the Arm's Length Price.
- That is, Not exceeding 10% clause (=Not more than 10% clause) should not apply to the excess part.

## Article 12 (Royalty)

- Purport
- This Article stipulates for the taxation of Royalty paid in terms of the license of copyright, patent, trade mark.
- In the OECD Model Tax Convention, the State in which beneficial owner of Royalty resides has the exclusive right to tax.
- However, the United Nations Model Tax Treaty stipulates for both taxation Resident country and source country.
- That is, it shows a conflict between the technology introducing countries and technology exporting countries.

## Royalty clause in Japanese Tax Treaty with other countries

- In the Royalty clause of OECD Model Tax Convention, the transfer profit from copyright, patent, etc. resulting in Royalty does not include the scope of the Royalty.
- However, Some of the Japanese Tax Treaties with other countries that the transfer price is included in the Scope of Royalty.
- (Income Tax Law 161 ①, Corporation Tax Law 138⑦)
- Japan US new tax treaty(2004) stipulates that Royalty is exempted from withholding taxation and also introduced the new clause about the LOB (Limitation on Benefits) related to the “conduit transaction”.

## Para.1 of Article 12(Residence country Taxation)

- Para.1 of Article 12
- (Principle)
- Royalties arising in a Contracting State and beneficially owned by a resident of the other Contracting States shall be taxable only in that other State.
- ((Only one) Exception)
- In the case that the right of property in respect of which the royalties are paid is effectively connected with PE
- Question: What is the beneficial owner ?



## Para.2 of Article 12(Definition of Royalty)

- Registration or Non Registration of the right is not related to the application of Article 12. (Commentary No.8)
- Compensation, which a person would be obliged to pay for fraudulently copying or infringing the right, is covered by the definition.(Commentary No.8)
- Cinematograph films are treated as royalties. (Commentary No.10)

## Know-how

- Definition of Know-how
- Para.2 is referring to the concept of “know-how”.(Commentary No.11)
- That is, “the consideration for information concerning industrial, commercial or scientific experience” means payments for the supply of Know-how.
- In the Know-how contract, one of the parties agree to the other, so that he can use them for his own account, his special knowledge and experience which remain unrevealed to the public.(Commentary 11.1)

## Service

- From Commentary 11.2
- Difference between Know-how Contract & Service Contract
- The know-how contract differs from contracts for the provision of services, in which one of the parties undertakes to use the customary skills of his calling to execute work himself for the other party.
- Payments made under the latter contracts(=service contract) generally fall under Article 7(Business Income; PE).

## Computer

- Commentary No.12 of Article 12 stipulates as is the following;
- Whether payments received as consideration for computer software may be classified as royalties poses difficult problems but is a matter of considerable importance in view of the rapid development of computer technology in recent years and the extent of transfers of such technology across national borders.
- **Q The consideration of computer software is Royalty ?**

## Para.3 of Article 12(Royalty effectively connected with PE)

1. The beneficial owner of the royalty has a PE in a source country.
2. The right or property resulting in royalty is effectively connected with PE.
3. The royalty is not under Article 12.

**Q In this case, what Article should be applied ?**

**Q Carrying on business of PE is a condition for the application ?**

## Para.4 of Article 12(Payment exceeding ALP)

- Where, be reason of special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply to the last-mentioned amount.

## Article 13(Capital Gains)

Purport  
Commentary No.3

Article 13 divides Property into immovable property, business property, aircraft or boats, shares deriving from immovable property, stipulates the taxing power in each kinds of property.

Articles 13 stipulates the taxing power to the Capital gains can not be given to the States such as the states having no domestic tax law related to the capital gains.

Article 13 must apply to all kinds of taxes.

### Para. 1 of Article 13 (Alienation of immovable property )

- The States which has immovable property may tax to the capital gains from the alienation of immovable property.

- **Question**

**1 If the immovable property is situated in the third state, which state may tax the capital gains alienated in the third state ?**

**2 Which paragraph of Article 13 should be applied in this case?**

## Para.2 of Article 13(Alienation of Business Property)

- The states in which PE is situated may tax to the gains from the alienation of movable property forming part of the business property of PE.

- **Question**

**1 Which Article is similar to this Article 13 ?**

**2 How about the alienation of PE itself ? Under this Article 13 ?**

**3 The idea of the so-called “the force of attraction of the permanent establishment” is adopted in this paragraph?**

## Para.3 of Article 13(Alienation of aircraft or boats)

Para.3 is an exception of Para.2.

- Gains from the alienation of ships or aircraft, etc. shall be taxable only in the Contracting State in which **the place of effective management** of the enterprise is situated.

- **Question**

- **What other Articles with which this principle is in conformity ?**

## Para.4 of Article 13(Alienation of Shares deriving from Immovable Property)

- Commentary No.28.3
- By providing that gains from the alienation of share deriving more than 50% of their value directly or indirectly from immovable property situated in a Contracting State may be taxed in that State, paragraph 4 provides that gains from the alienation of such shares and gains from the alienation of the underlying immovable property, which are covered by paragraph 1 are, equally taxable in that State..

## Para.5 of Article 13(Alienation of other assets)

- Commentary No29
- As regards gains from the alienation of any property other than that referred to in paragraphs 1,2,3 and 4, paragraph 5 provides that they are taxable only in the State of which the alienator is a resident. This corresponds to the rules laid down in **Article[ ]**.
- **Question**
- **How about Gains derived from the exercises of STOCK-OPTION ?**
- **What is Stock-option ?**

## Article 15 (Income from Employment)

- Purport
- Art.15 stipulates the principle of Income taxation from Employment.
- Para.1 of Article 15 stipulates the principle of the Income from Employment.
- Para.2 and Para.3 of Article15 stipulates the exception to the principle.

## Para.1 of Article 15(General Principle)

### Commentary 1

Para.1 stipulates **the general rule** as to the taxation of income from employment, namely, that such income is taxable in the State where **the employment is actually exercised**.

### Commentary 2.1

Benefits in kind received in respect of an employment such as **STOCK-OPTIONS**, the use of a residence or automobile, etc., is included in the “salaries, wages, and other similar remuneration”

## Para.2 of Art.15(Tax exemption to Short term sojourner)

- Commentary 3
- Para.2 contains, however, a general exception to the rule in paragraph 1.
  
- Commentary 4
- The following three conditions prescribed in this paragraph must be satisfied for the remuneration to qualify for the exemption.

1<sup>st</sup> Condition Visiting days, **not more than 183 days**(183days is OK)

2<sup>nd</sup> Condition **Employer, Non resident** in the other State

3<sup>rd</sup> Condition **PE does not bear the remuneration.**

All these 3 conditions should be satisfied to get the tax exemption.

## 1<sup>st</sup> Condition                      183 days Basis

- Commentary 4
- It is further stipulated that this time period may not be exceeded “in any twelve month period commencing or ending in the fiscal year concerned”.
- **Question**
- **For instance, if an employee is present in a State during 150 days between 1 April 2001 and 31 March 2002 but is present there 153 days between 1 August 2001 and 3 May 2002, condition 1 is satisfied ?**



## 2<sup>nd</sup> Condition Employer Non Resident

- Commentary 6
- The employer paying the remuneration must not be a resident of the State.
- Purport

Avoiding the source taxation of Short-term employments to the extent that the employment is not allowed as a deductible expense in the State of source is the purpose.

Because the employer is not taxable in that State as he is not a resident and has not PE in that State.

## 3<sup>rd</sup> Condition Remuneration, Not borne by PE

- Commentary 7
- If the employer has a PE in the State in which the employment is exercised, the exemption is given on condition that the remuneration is not borne by that PE.
- **Question**
- **In computing the profits of a PE, Para.2 (c) of Art.15 can be applied if the PE is admitted the income deduction ?**

## Para.3 of Art.15(Exception:the remuneration of crews of ships or aircraft.)

- Commentary No.9
- Para.3 applies to **the remuneration** of crews of ships or aircraft operated in international traffic and so on.
- Para.3 applies **a rule which follows up to a certain extent the rule** applied to the income from shipping and so on.
- That is, a rule is to tax them in the Contracting State in which **the place of effective management** of the enterprise concerned is situated.

## Art.16(Directors' fees)

- Purport
- Directors' fees may be taxed in the other Contracting State in which a company is a resident.
- Because it might be sometimes be difficult to ascertain where the services are performed.(Commentary No.1)
- **Question**
- **Other similar payments include "STOCK OPTION"?**
- **(Hint : Commentary No.1.1 )**
- **The relationship between this Article and Art.13(Capital gain) ?**

## Art.17(Artistes and Sportsmen)

- **Purport**

- Because of only one time or very short term international activities of Artistes and Sportsmen, or because of complicated international tax avoidance scheme, the practical difficulties have occurred.
- That's why artistes and sportsmen may be taxed in the other Contracting State in which **their personal activities as such are performed.** (Commentary No.1)

## Para.1 of Art.17(Taxation to Artistes & Sportsmen)

### Question 1

Commentary No.1 stipulates that this provision is an exception to the rules in Article 7 and to that in paragraph 2 of Article 15, respectively.

**Could you clarify the meaning of this commentary ?**

### Question 2

**Film director is included in the "Artistes" ?**

**Golfer is included in the "Sportsmen"?**

### Question 3

**The royalty Artistes get as a compensation of the right of reproduction of copyrighted music work is under Art.17 ?**

## Para.2 of Art.17(Taxation to Artiste company)

- Commentary No.11
- Para.2 deals with situations where income from their activities accrues to other persons.
- **Question**
- **Who are Other persons ?**
  
- Para.2 stipulates that Source country may tax the income attributed to the company, which did not distribute to the artistes and sportsmen, notwithstanding the provisions of Articles 7 and 15.

## Notwithstanding the provisions of Articles 7 and 15 ?

Key concept

Article 7 Without PE → No business taxation

Article 15 Short term stay → Tax exemption

## Art.18(Pensions)

- Purport
- Pensions related to private employment are taxable only in the State of residence of the recipient.(Commentary No.1)
- **Question**
- **Taxation by the State of residence of the recipient ? Why ?**

## Art. 19 ( Government Services)

No1

- **Taxation principle**
- Art.19 stipulates para.1(a)
- **Exclusive taxation right by dispatching State (a Contracting State)** to the salaries, wages, and other similar remuneration paid by a Contracting State, etc.as services rendered to that State, etc.
- Art.19 stipulates para.2(a)
- **Exclusive taxation right by dispatching State (a Contracting State)** to the pensions paid by, or out of funds created by a Contracting State, etc. related to services rendered to that State, etc.

## Art. 19 (Government Services)

No.2

- **Exceptions** to the Art.19 Para.1(a)
- **Taxation only by the other Contracting State**
- In terms of salaries, wages and other similar remuneration
- On the condition that
- 1.The services are rendered in that State
- *and*
- 2.The resident is a national of that State
- *or*
- 3.The resident who renders the service did not become a resident of that State solely for the purpose of rendering the services.

## Art. 19 (Government Services)

No3

- **Exceptions** to the Art.19 Para.2(a)
- **Taxation only by the other Contracting State**
- In terms of Pensions
- On condition that
- 1. Individual who received pension is resident in the other Contracting State.
- *and*
- 2. Individual who received pension is a national of the other Contracting State.

## Art. 20 (Students)

- Commentary No.1
- The State where the student or business apprentice is staying shall exempt from tax in terms of all such payments received from sources outside the State as their maintenance, education, or training.
- Commentary No.2
- **Why the word “immediately” was inserted in the Model Convention ?**
- It is to make clear that the Article does not cover a person who has once been a resident of a Contracting State but has subsequently moved his residence to a third State before visiting the other Contracting State.
- Commentary No.3
- This Article covers the remuneration for services rendered by the recipient ?
- **If not, what Article covers ?**
- **In the case of independent services ?**

## Art. 21 (Other Income)

### No.1

- Para.1 (Taxation Principle)
- **Residence State : Exclusive Taxation Right**
- Other income (income of a resident of a Contracting State not dealt with in the foregoing Articles) shall be taxed exclusively by that State.
- Para.2 (Exception of Para.1)
- If the right or property resulting in payment is effectively connected with PE, the State which has PE has taxation right.

## Art. 21 (Other income)

No.2

- Question

- If the payer of income as interest is as same resident in a Contracting State as the recipient, and if the income is effectively connected with PE in the other Contracting State, Art. 21 can be applied ?
- Because we have a problem of withholding taxation problem in a Contracting State.

## Art. 21 (Other Income)

No.3

- Question

The income from immovable property defined in Art.6 para.2 are covered by this para.2 of Art. 21 ?



## Art. 22 (Taxation of Capital)

- This Article deals only **taxes on capital**.
- Art. 22 defines the taxes in capital.
  
- In terms of Immovable property, Para.1 stipulates.
- In terms of movable property as a part of PE, Para.2 stipulates.
- In terms of capital represented by ships and aircraft operated in international traffic, etc. the Contracting State in which the place of effective management of enterprise is situated.
- All other elements of capital of a resident of a Contracting State shall be taxable only in that state

## Para. 3 of Art. 22(Ships and Aircraft)

- **Effectively Connected Rule** to Ships & Aircraft
- This principle is in conformity with the taxation principle of Art. 8 and para.3 of Art.13.
- Art. 8 (Profits from Shipping, Inland Waterways Transport and Air Transport)
- Para.3 of Art.13(Gains from the alienation of ships, etc. and movable property related to the operation of such ships, etc.)

## Commentary No.4 related to Para.3 of Art.22

- This rule corresponds to the provisions of Art.8 and para.3 of Article 13. It is understood that para.3 of Art.8 is applicable if the place of effective management of shipping enterprise or of an inland waterways transport enterprise is aboard a ship or boat.
- **Question**
- **If the place of Effective Management is aboard a ship or boat, which State has the right of Taxation?**

## Art.23A & 23B(Methods for elimination of double taxation)

- **Purport**
- **Art.23A&23B deals with Juridical Double Taxation.(Commentary No1).**
- The main object of this Model Convention is to **make an offer the solution methods of problems** in terms of typical and various kinds of issues related to **international juridical double taxation** in line with the unified basis.
- In order to avoid the double taxation, Model Convention recognizes (1)the **exclusive taxation right** in a Contracting State **or** (2)admits the taxation right in a Contracting State in the first stage, and eliminates the double taxation in the other Contracting State resulting from taxation in a Contracting State in the second stage.
- In the case of (2), Model Convention has the elimination system in the residence State of Juridical double taxation.

## Juridical Double Taxation & Economic Double Taxation

- Question
- *What's the difference ?*
- How many States are involved in each taxation ?(One State or two States ?)
- The object of taxation such as income or capital is same or not ? (Same income or not ?)
- The taxpayer is same or not? (the same person or two different persons ?)

## Exemption Method & Credit Method

- In Japan, we adopt Credit Method in the our treaties.
- Because we adopt Credit Method in our domestic law.
- Many Treaty partners also adopt the Credit Method.
- Even Treaty Partners adopting Exemption Method in the tax treaty adopt the Credit Method pertaining to only Investment income.
- We have tax sparing system in some tax treaties. (Tax sparing system considers reduced tax amount as the amount of tax payment and admits the foreign tax credit.)

## List up the Exclusive right Articles in Model Convention

- Could you indicate all the Articles which admit the exclusive right in the Model Convention ?
- Articles Number ?
- Kinds of income?
- Source States or Residence States ?

## Exemption Method(Commentary B No.13,14)

- In the case that Residence State adopts the Exemption Method on foreign income, Residence State does not impose the tax on the income levied by source State or PE State.
- Residence State : a Contracting State
- Source State : the other Contracting State which has income source
- PE State : the other Contracting State which has PE
- Exemption Method is divided into two method such as “full exemption” and “exemption with progression”.

## Credit Method(Commentary No.15,16)

- Under principle of credit, the State of residence R calculates its tax on the basis of the taxpayers' total income including the income from the other State E or S which, according to the Convention, may be taxed in that other State. It then allows a deduction from its own tax for the tax paid in the other State.
- The principle of credit may be applied by two main methods such as "full credit" and "ordinary credit".

## Para. 1 of Art.23 A(Exemption obligation of Residence State)

- Commentary No.33
- The State of residence R shall exempt from tax income and capital which in accordance with the Convention "may be taxed" in the other State E or S.
- Commentary No.34
- The State of residence must accordingly exempt income and capital which may be taxed by the other State in accordance with the Convention whether or not the right to tax is in effect exercised by that other State.

## Para.2 of Art.23 A(Exception : Dividend, Interest Credit Method)

- Commentary No.47
- For the State of residence the application of the credit method would normally seem to give up a satisfactory solution.

## Para.3 of Art.23 A (Exemption with Progression)

- Commentary No.55
- According to paragraph 3 of Article 23 A, the State of residence retains the right to take amount of exempted income or capital into consideration when determining the tax to be imposed on the rest of the income or capital.

## Para.4 of Art.23 A (Non application of Para.1 → No exemption ! )

- Commentary No.56.1
- The purpose of this paragraph is to avoid the double non taxation.
- Commentary No.56.2
- This paragraph only applies to the extent that the State of source has applied the provisions of the Convention to exempt an item of income or capital, etc. (→ No exemption in order to avoid the double non taxation by Tax Treaty)
- Therefore,
- The paragraph would therefore not apply where the State of source considers that it may tax an item of income or capital in accordance with the provisions of the Convention but where no tax is actually payable on such income or capital under the of the domestic laws of the State of source.(→ Exemption OK, because non tax payment by Domestic law)

## Commentary 56.2 Key Sentence

- In such a case, the State of residence must exempt that item of income under the provisions of paragraph 1 because the exemption in the State source does not result from the application of the provisions of the Convention but, rather, from the domestic law of the State of source.
- → Concept of Double non taxation which para.1 can be applied is from the Tax Treaty, not from the Domestic Law.

**Question : the following process is right or not ?**

- → **Source Taxation OK by Tax Treaty : Not double non taxation**
- **But actual Tax exemption by domestic law**
- **Para.1 should be applied! : No application of Para.4**

## Part.1 of Art.23B (Credit Method)

- Commentary 57
- Article 23 B, based on the credit principle, follows the ordinary credit method.
- Commentary 61
- The amount of foreign tax for which a credit has to be allowed is the tax effectively paid in accordance with the Convention in the other Contracting State.
- Commentary 62
- According to the provisions of the second sentence of paragraph 1 of Article 23B, the deduction which the State of residence(R) is to allow is restricted to that part of the income tax which is appropriate to the income derived from the State S, or E (so –called “maximum deduction”)

## Para.2 of Art. 23 B (Exemption with Progression)

- Commentary No.79
- This paragraph has been added to enable the State of residence to retain the right to take the amount of income or capital exempted in that State into consideration when determining the tax to be imposed on the rest of the income capital.



## Art. 24 (Non discrimination)

- Purport
- This Article stipulates that a discriminatory imposition of taxes to people of the other Contracting State forbid and guarantee national treatment.

## Para.1 of Art. 24 (Non Discrimination on Nationality)

- Commentary No.5
- This paragraph establishes the principle that for the purpose of taxation discrimination on the grounds of **nationality** is forbidden.

- Question

1. What is “Nationals” ? Corporation is also included ? • • • • •
2. The resident of third country is applied by this Para.?
3. Resident taxpayer and Non resident taxpayer are in the circumstance

## In the case of non application of Para.1 ?

- In the same circumstance or not ? ← important basis
- “The State can not be obliged to give nationals of the other State who do not reside in its territory the same treatment as it gives its resident nationals.” (Commentary 8)
- Why ?
- Tax haven case in Commentary 8 ?

## Para.2 of Art.24(Expansion of Application of Para.1 to Stateless Persons)

- Question
- Commentary 28 annotates that the purpose of para.2 is to limit the scope of the clause concerning equality of treatment with nationals of a Contracting State solely to stateless persons who are residents of that or the other Contracting State.
- Why the commentary limit like this ?

## Para.3 of Art. 24(Non discrimination to PE)

- Question 1

- After reading the Commentary of Para.3 of Art. 24, could you clarify the relationship between the Para.3 of Art. 24 and Para.2 of Art.7?

(Hint)

- AOA principle and Non discrimination principle are the same?
- What is AOA principle ?

- Question 2

- PE can have foreign tax credit in the AOA principle?

## Para.4 of Art.24(Non discrimination on Disbursements)

- Commentary No. 73
- This paragraph is designed to end a particular from discrimination resulting from the fact that in certain countries the deduction of interest, royalties and other disbursements allowed without restriction when the recipient is resident , is restricted or even prohibited when he is a non-resident.

## Para.5 of Art. 24(Non discrimination)

- Question

- How about Transfer Pricing audit ?
- Under the TP taxation rule, the subsidiary or parent corporation which need the special capital situation based on TP rule will be in some disadvantage circumstances ?
- Could you indicate the strict requirements for related corporation ?

## Para.6 of Art.24(Tax items to be objected)

- Para. 6 stipulates that this provision applies to all kinds of taxes in spite of tax items provided for Art.2.

## Art. 25 (Mutual Agreement Procedure) 1

- Purport
- 1. This Article stipulates for resolving difficulties from application of the Convention.(Commentary No.1)
- 2. Para.1&2 stipulates for resolving the situation of taxpayers subjected to taxation not in accordance with the provisions of the Convention.(Commentary No.2)
- 3.Para.3 stipulates a mutual agreement for interpretation of the Convention and consultation for the elimination of double taxation.(Commentary No.3)

## Art. 25 (Mutual Agreement Procedure) 2

- Purport
- 4. Para.4 stipulates MAP can do without going through diplomatic channels, and ensure the confidentiality by applying Art.26 in terms of exchange of information in this process.(Commentary No.4)
- 5. Para.5 stipulates the Arbitration process which allows a taxpayer to request in terms of unresolved issues without reaching a mutual agreement within two years.(Commentary No.5)

## Para.1 & Para.2 (Taxation not in accordance with the provisions of the Convention)

- Examples of Juridical double taxation(Commentary No.9)
- 1. problem on attribution of profits to a PE under para. 2 of Art. 7
- 2. the taxation in the State of the payer- in case of a special relationship between the payer and the beneficial owner- of the excess part of interest and royalties under Art.9, para.6 of Art.11 or para4 of Art.12.
- 3.cases of application of legislation to deal with thin capitalization when the state of the debtor company has treated interest as dividends, insofar as such treatment is based on clauses of a convention corresponding for example to Art.9 or para.6 of Art.11.
- 4. cases of lack of information such as the determination of residence (para.2 of Art.4), the existence of PE (Art.5)
- 5. The temporary of nature of the services performed by employee (para.2 of Art.15).
- Examples of Economic double taxation(Commentary No.10)
- Transfer Pricing Taxation
- Arm's Length Principle (para.1 of Art.9)
- Correlative adjustment (para.2 of Art.9)

**Question : Why we call, "Juridical" or "economic" double taxation?**

## Para.1 & Para.2 (Direct Contravention of the Convention)

- 1.the case when one state taxes a particular class of income in respect of which the Convention gives an exclusive right to tax to the other State even though the latter is unable to exercise it owing to a gap in its domestic laws.
- 2.the case concerns persons who, being nationals of one Contracting State but residents of the other State, are subjected in that other State to taxation treatment which is discriminately under the para.1 of Art.24.
- 3.Taxpayers considering " the taxation is not in accordance with the Convention" must establish that this taxation appears as a risk which is not merely possible but probable.

## Para1 of Art.25(Admissible objection under Para.1 of Art.1) 1

- Admissible objections must be presented to the competent authority of the taxpayer's State of residence.

- **Question**

- **Taxpayer's residence is a principle in terms of Admissible objections.**

- **So, what is exception of this principle?**

- **Hint**

- **Commentary 18**

## Para1 of Art.25(Admissible objection under Para.1 of Art.1) 2

- Admissible objection must be so presented within three years of the first notification of the action which gives rise to taxation which is not in accordance with the Convention.

- Commentary 21

- The provision fixing the starting point of the three years time limit as the date of the "first notification" of the action resulting in taxation not in accordance with the provisions of the Convention" should be interpreted in the way most of favourable to the taxpayer.

## MAP *process*

First Step : Admissible Objection by taxpayer to the Competent Authority

Second Step : Mutual Agreement Procedure between Competent Authorities

### **Question**

**The Competent Authority has Duty to reach mutual agreement ?**

## Para.1 & 2 (MAP & Lawsuit) of Art.25 1

Usual conduct by Taxpayer in terms of MAP & Lawsuit

### 1. Taxpayer's selection

If taxpayer select MAP first, taxpayer ask (the tax tribunal and) the court to stop the lawsuit procedure.

Of course, taxpayer can select the court procedure only.

### 2. In the case of MAP agreement between the two States

If taxpayer accept the agreement, the case is over.

If taxpayer do not accept the agreement, the case can be transferred to the court by the taxpayer.



## Para.1 & 2 (MAP & Lawsuit) of Art.25 2

### 3. In the case of MAP non agreement between the two States

The case can be transferred to the court by the taxpayer.

#### **Question**

**In Japan, why taxpayers conduct in such a way?**

**The result (court decision) impact on the MAP ?**

## Para.1 & 2 (MAP & Lawsuit) of Art.25 3

- Commentary No.44
- Depending upon domestic procedures, **the choice** of redress is normally that of **the taxpayer** and in most cases it is the domestic recourse provisions such as **appeals or court proceedings** that are **held in abeyance** in favour of the less formal and bilateral nature of mutual agreement procedure.

## Para.1 & 2 (MAP & Lawsuit) of Art.25

4

- Commentary No.45
- In short, therefore, the implementation of such a mutual agreement should normally be made subject:
  - -- to the acceptance of such mutual agreement by the taxpayer, and
  - -- to the taxpayer's withdrawal of the suit at law concerning those points settled in the mutual agreement.

## Para.3 of Art.25(MAP on the interpretation of Convention)

- Commentary No.50
- The first sentence of this paragraph invites and authorizes the competent authorities to resolve, if possible, difficulties of interpretation or application by means of mutual agreement.
  
- Commentary No.51
- The second sentence of paragraph 3 enables the competent authorities to deal also with such cases of double taxation as do not come within the scope of the provisions of the convention.

## Para.4 of Art.25(Practical Administration of MAP)

- Commentary No.57
- This paragraph provides first that the competent authorities may communicate with each other directly. It would therefore not be necessary to go through diplomatic channels.
  
- Commentary No.58
- The competent authorities may communicate with each other by letter, facsimile transmission, telephone, direct meetings, or any other convenient means. They may, if they wish, formally establish a joint commission for this purpose.
- 

## Para.5 of Art.25 (Arbitration Process)

- Commentary No.63
- This paragraph provides that, in the cases where the competent authorities are unable to reach an agreement under paragraph 2 within 2 years, the unresolved issues will, at the request of the person who presented the case, be solved through an arbitration process.

## Art. 26 (Exchange of Information)

- Purport (Commentary No.1)
- 1. It appears to be desirable to give administrative assistance for ascertaining facts related to which the rules of the convention are to be applied.
- 2. In view of the increasing internationalization of economic relations, the Contracting States have a growing interest in the reciprocal supply of information on the basis of which domestic taxation laws have to be administered, even if there is no question of the application of any particular article of the Convention.

## Para.1 of Art.26 (Rule on Exchange of Information)

- **Information to be objected**
- The standard of “foreseeable relevance” intended to get the information in tax matters to the widest possible extent  
(Para.1 & Commentary No.5)
  - ➔ fishing expedition (not identify the name to be collected) ×  
not related to the taxation ×
- non resident information can be included (Para.1 )
- tax items other than Art.2 can be included(Para.1)
- Information for application of domestic law can be objected in the exchange of information even if the specified clause is not applied. (Commentary 5)
- A limitation to the exchange of information is set so that information should be given only insofar as the taxation under the domestic taxation laws concerned is not contrary to the convention.(Commentary 5)
- The information covered by para.1 is not limited to taxpayer-specific information.  
Risk analysis techniques or tax avoidance or evasion schemes are included in the EOI.

## Para.1 of Art.26 (Example of the range of EOI)

- EOI to be needed to application of the Convention
- When applying Article 12, information on amount of royalty is asked.  
Please refer to other cases in commentary No.7.
  
- EOI to be needed to implementation of the domestic laws
- Information of the price what the other States paid is asked for the application of the domestic law.  
Please refer to other cases in commentary No.8.

## Para.1 of Art.26 (EOI 3 different ways plus $\alpha$ )

### Commentary 9

1. **EOI on request** information related to audit
2. **EOI automatically** interest, etc.
3. **EOI spontaneously** information for the other State

### Commentary 9-1

4. **Simultaneous examination** audit between two or more States
5. **Tax examination abroad** audit in the other State by dispatched auditor
6. **Industry-wide EOI** EOI in terms of specified whole economic sector such as oil industry, etc.

Para.2 of Art.26 ()

- Article 27 Assistance in the collection of taxes

- Article 28 Members of diplomatic missions and consular posts

- Article 29 Territorial extension

## Final Provisions

- Article 30 Entry into force
  
- Article 31 Termination



## ***Hybrid Mismatch Arrangements***

from OECD (2014), *Neutralising the Effects of Hybrid Mismatch Arrangements*, Paris

Hideaki ISHIGURO, JICA expert

Follow-up Seminar, April 6, 2015

Ulaanbaatar, Mongolia

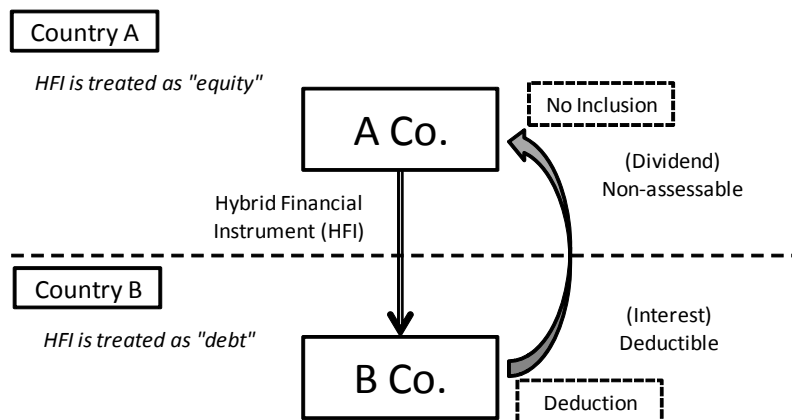
### Definition of Hybrid Mismatch Arrangement

(para.41)

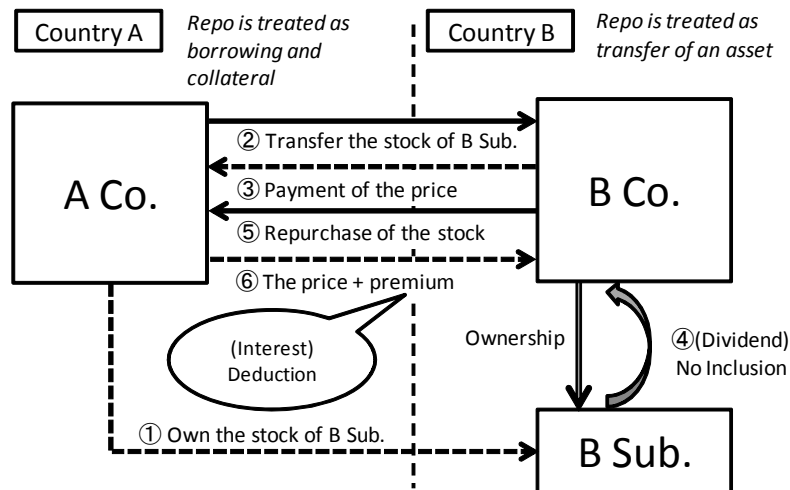
A hybrid mismatch arrangement is an arrangement that **exploits a difference in the tax treatment of an entity or instrument under the laws of two or more tax jurisdictions** to produce a mismatch in tax outcomes where that **mismatch has the effect of lowering the aggregate tax burden of the parties** to the arrangement.

# Cases and Recommendation on "Deduction and No Inclusion"

## 1. Hybrid Financial Instrument



## 2. Collateralized Loan Repo



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Hybrid Mismatch Arrangements

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## Recommended Rule

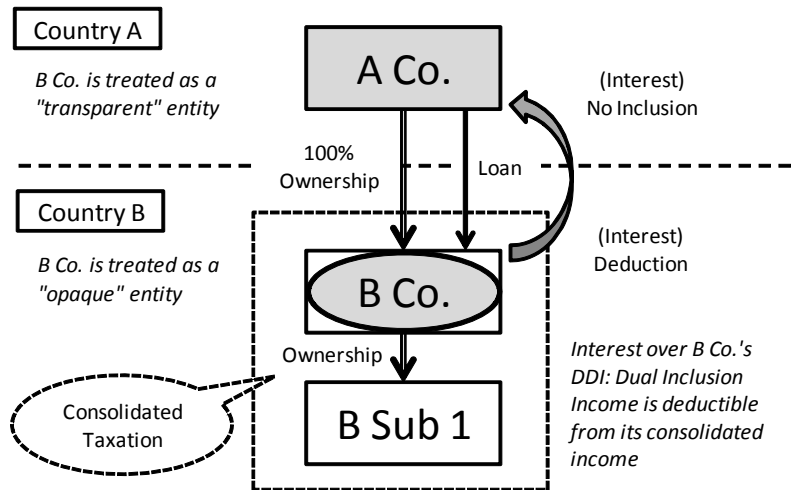
- **Response**
  - Deny payer deduction
- **Defensive Rule**
  - Include as ordinary income
- **Scope**
  - Related parties and structured arrangements

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### 3. Disregarded Payments Made by a Hybrid Entity to a Related Party



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### Recommended Rule

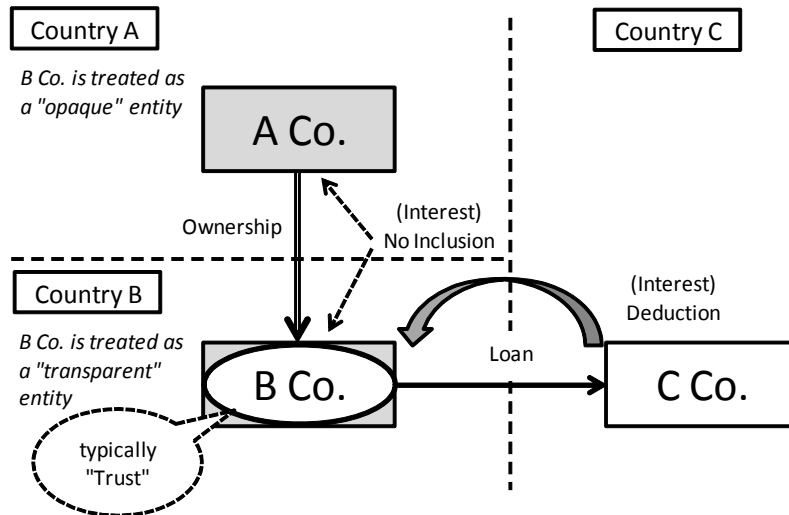
- **Response**
  - ➔ Deny payer deduction
- **Defensive Rule**
  - ➔ Include as ordinary income
- **Scope**
  - ➔ Controlled group and structured arrangements

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## 4. Payment to a Foreign Reverse Hybrid



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Hybrid Mismatch Arrangements

9

## Recommended Rule

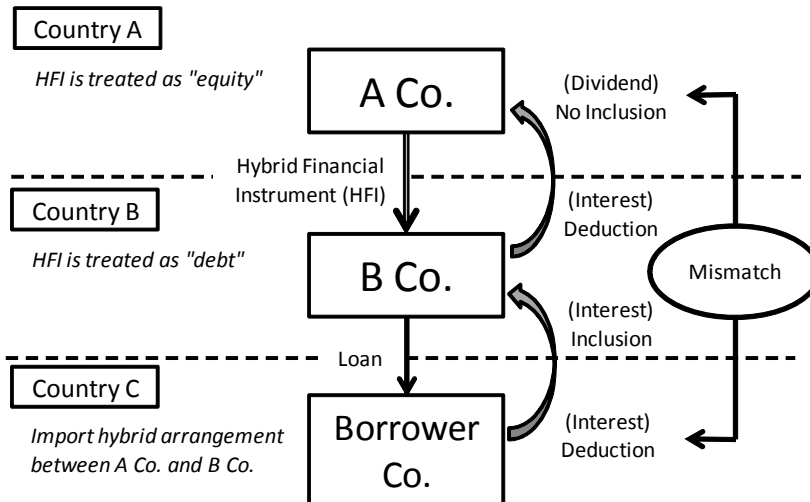
- **Response**
  - ➔ Deny payer deduction
- **Defensive Rule**
  - ➔ None
- **Scope**
  - ➔ Controlled group and structured arrangements

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Hybrid Mismatch Arrangements

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## 5. Importing Mismatch from Hybrid Financial Instrument



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Hybrid Mismatch Arrangements

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## Recommended Rule

- **Response**
  - ➔ Deny payer deduction
- **Defensive Rule**
  - ➔ None
- **Scope**
  - ➔ Members of controlled group and structured arrangements

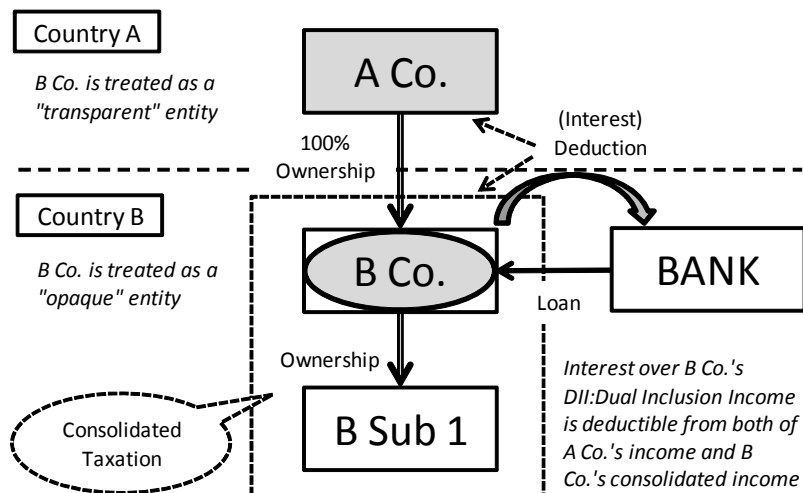
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Hybrid Mismatch Arrangements

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# Cases of "Double Deduction"

## 6. Basic Double Deduction Structure Using Hybrid Entity



## Recommended Rule

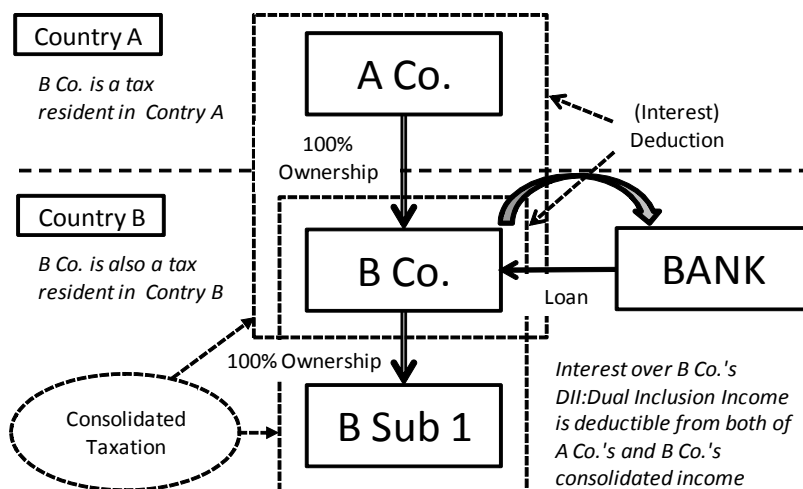
- **Response**
  - ➔ Deny parent deduction
- **Defensive Rule**
  - ➔ Deny payer deduction
- **Scope**
  - ➔ No limitation on response, defensive rule applies to controlled group and structured arrangements

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Hybrid Mismatch Arrangements

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## 7. Dual Consolidated Companies



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Hybrid Mismatch Arrangements

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## Recommended Rule

- **Response**
  - Deny resident deduction
- **Defensive Rule**
  - None
- **Scope**
  - No limitation on response

## Summary of the BEPS Action Plan by action

Action	Description	Expected output	Deadline	Relevance to developing countries
<b>1 – Address the tax challenges of the digital economy</b>	<i>Identify the main difficulties that the digital economy poses for the application of existing international tax rules and develop detailed options to address these difficulties taking a holistic approach and considering both direct and indirect taxation. Issues to be examined include, but are not limited to, the ability of a company to have a significant digital presence in the economy of another country without being liable to taxation due to the lack of nexus under current international rules, the attribution of value created from the generation of marketable location-relevant data through the use of digital products and services, the characterisation of income derived from new business models, the application of related source rules, and how to ensure the effective collection of VAT/GST with respect to the cross-border supply of digital goods and services. Such work will require a thorough analysis of the various business models in this sector.</i>	Report identifying issues raised by the digital economy and possible actions to address them	September 2014	Medium
<b>2 – Neutralise the effects of hybrid mismatch arrangements</b>	<i>Develop model treaty provisions and recommendations regarding the design of domestic rules to neutralise the effect (e.g. double non-taxation, double deduction, long-term deferral) of hybrid instruments and entities. This may include: (i) changes to the OECD Model Tax Convention to ensure that hybrid instruments and entities (as well as dual resident entities) are not used to obtain the benefits of treaties unduly; (ii) domestic law provisions that prevent exemption or non-recognition for payments that are deductible by the payor; (iii) domestic law provisions that deny a deduction for a payment that is not includible in income by the recipient (and is not subject to taxation under controlled foreign company (CFC) or similar rules); (iv) domestic law provisions that deny a deduction for a payment that is also deductible in another jurisdiction; and (v) where necessary, guidance on co-ordination or tie-breaker rules if more than one country seeks to apply such rules to a transaction or structure. Special attention should be given to the interaction between possible changes to domestic law and the provisions of the OECD Model Tax Convention. This work will be co-ordinated with the work on interest expense deduction limitations, the work on CFC rules, and the work on treaty shopping.</i>	Changes to the Model Tax Convention	September 2014	Low
		Recommendations regarding the design of domestic rules	September 2014	
<b>3 – Strengthen CFC rules</b>	<i>Develop recommendations regarding the design of controlled foreign company rules. This work will be co-ordinated with other work as necessary.</i>	Recommendations regarding the design of domestic rules	September 2015	Low
<b>4 – Limit base erosion via interest deductions and other financial payments</b>	<i>Develop recommendations regarding best practices in the design of rules to prevent base erosion through the use of interest expense, for example through the use of related-party and third-party debt to achieve excessive interest deductions or to finance the production of exempt or deferred income, and other financial payments that are economically equivalent to interest payments. The work will evaluate the effectiveness of different types of limitations. In connection with and in support of the foregoing work, transfer pricing guidance will also be developed regarding the pricing of related party financial transactions, including financial and performance guarantees, derivatives (including internal derivatives used in intra-bank dealings), and captive and other insurance arrangements. The work will be co-ordinated with the work on hybrids and CFC rules.</i>	Recommendations regarding the design of domestic rules	September 2015	High
		Changes to the Transfer Pricing Guidelines	December 2015	
<b>5 – Counter harmful tax practices more effectively, taking into account transparency and substance</b>	<i>Revamp the work on harmful tax practices with a priority on improving transparency, including compulsory spontaneous exchange on rulings related to preferential regimes, and on requiring substantial activity for any preferential regime. It will take a holistic approach to evaluate preferential tax regimes in the BEPS context. It will engage with non-OECD members on the basis of the existing framework and consider revisions or additions to the existing framework.</i>	Finalise review of member country regimes	September 2014	Medium
		Strategy to expand participation to non-OECD	September 2015	
		Revision of existing criteria	December 2015	
<b>6 – Prevent treaty abuse</b>	<i>Develop model treaty provisions and recommendations regarding the design of domestic rules to prevent the granting of treaty benefits in inappropriate circumstances. Work will also be done to clarify that tax treaties are not intended to be used to generate double non-taxation and to identify the tax policy considerations that, in general, countries should consider before deciding to enter into a tax treaty with another country. The work will be co-ordinated with the work on hybrids.</i>	Changes to the Model Tax Convention	September 2014	High
		Recommendations regarding the design of domestic rules	September 2014	

<b>7 – Prevent the artificial avoidance of PE status</b>	<i>Develop changes to the definition of PE to prevent the artificial avoidance of PE status in relation to BEPS, including through the use of commissionaire arrangements and the specific activity exemptions. Work on these issues will also address related profit attribution issues.</i>	Changes to the Model Tax Convention	September 2015	High
<b>8 – Assure that transfer pricing outcomes are in line with value creation: intangibles</b>	<i>Develop rules to prevent BEPS by moving intangibles among group members. This will involve: (i) adopting a broad and clearly delineated definition of intangibles; (ii) ensuring that profits associated with the transfer and use of intangibles are appropriately allocated in accordance with (rather than divorced from) value creation; (iii) developing transfer pricing rules or special measures for transfers of hard-to-value intangibles; and (iv) updating the guidance on cost contribution arrangements.</i>	Changes to the Transfer Pricing Guidelines and possibly to the Model Tax	September 2014	Medium
		Changes to the Transfer Pricing Guidelines and possibly to the Model Tax	September 2015	
<b>9 – Assure that transfer pricing outcomes are in line with value creation: risks and capital</b>	<i>Develop rules to prevent BEPS by transferring risks among, or allocating excessive capital to, group members. This will involve adopting transfer pricing rules or special measures to ensure that inappropriate returns will not accrue to an entity solely because it has contractually assumed risks or has provided capital. The rules to be developed will also require alignment of returns with value creation. This work will be co-ordinated with the work on interest expense deductions and other financial payments.</i>	Changes to the Transfer Pricing Guidelines and possibly to the Model Tax Convention	September 2015	Medium
<b>10 – Assure that transfer pricing outcomes are in line with value creation: other high-risk transactions</b>	<i>Develop rules to prevent BEPS by engaging in transactions which would not, or would only very rarely, occur between third parties. This will involve adopting transfer pricing rules or special measures to: (i) clarify the circumstances in which transactions can be recharacterised; (ii) clarify the application of transfer pricing methods, in particular profit splits, in the context of global value chains; and (iii) provide protection against common types of base eroding payments, such as management fees and head office expenses.</i>	Changes to the Transfer Pricing Guidelines and possibly to the Model Tax Convention	September 2015	High
<b>11 – Establish methodologies to collect and analyse data on BEPS and the actions to address it</b>	<i>Develop recommendations regarding indicators of the scale and economic impact of BEPS and ensure that tools are available to monitor and evaluate the effectiveness and economic impact of the actions taken to address BEPS on an ongoing basis. This will involve developing an economic analysis of the scale and impact of BEPS (including spillover effects across countries) and actions to address new types of data that should be collected, and developing methodologies based on both aggregate (e.g. FDI and balance of payments data) and micro-level data (e.g. from financial statements and tax returns), taking into consideration the need to respect taxpayer confidentiality and the administrative costs for tax administrations and businesses.</i>	Recommendations regarding data to be collected and methodologies to analyse them	September 2015	High
<b>12 – Require taxpayers to disclose their aggressive tax planning arrangements</b>	<i>Develop recommendations regarding the design of mandatory disclosure rules for aggressive or abusive transactions, arrangements, or structures, taking into consideration the administrative costs for tax administrations and businesses and drawing on experiences of the increasing number of countries that have such rules. The work will use a modular design allowing for maximum consistency but allowing for country specific needs and risks. One focus will be international tax schemes, where the work will explore using a wide definition of “tax benefit” in order to capture such transactions. The work will be co-ordinated with the work on co-operative compliance. It will also involve designing and putting in place enhanced models of information sharing for international tax schemes between tax administrations.</i>	Recommendations regarding the design of domestic rules	September 2015	Medium
<b>13 – Re-examine transfer pricing documentation</b>	<i>Develop rules regarding transfer pricing documentation to enhance transparency for tax administration, taking into consideration the compliance costs for business. The rules to be developed will include a requirement that MNE’s provide all relevant governments with needed information on their global allocation of the income, economic activity and taxes paid among countries according to a common template.</i>	Changes to the Transfer Pricing Guidelines and Recommendations regarding the design of domestic rules	September 2014	High
<b>14 – Make dispute resolution mechanisms more effective</b>	<i>Develop solutions to address obstacles that prevent countries from solving treaty-related disputes under MAP, including the absence of arbitration provisions in most treaties and the fact that access to MAP and arbitration may be denied in certain cases.</i>	Changes to the Model Tax Convention	September 2015	Medium
<b>15 – Develop a multilateral instrument</b>	<i>Analyse the tax and public international law issues related to the development of a multilateral instrument to enable jurisdictions that wish to do so to implement measures developed in the course of the work on BEPS and amend bilateral tax treaties. On the basis of this analysis, interested Parties will develop a multilateral instrument designed to provide an innovative approach to international tax matters, reflecting the rapidly evolving nature of the global economy and the need to adapt quickly to this evolution.</i>	Report identifying relevant public international law and tax issues	September 2014	Low
		Develop a multilateral instrument	December 2015	

# TPMs of the TP rule in Japanese taxation law

TPM (Transfer Pricing Method) is most important factor in executing the transfer pricing rule.

TPM articles are divided into 4 groups as follows:

## 1. Inventory sales transactions

Group A: Traditional transaction 3 methods in the law and *other 7 methods in the cabinet order*

(Article 66-4(2) -1(a)(b)(c), Article 66-4(2)-1(d))

Group B: Methods consistent with the traditional transaction 3 methods in the law and *other 7 methods in the cabinet order*

(Article 66 -4(2)-1(d))

## 2. Non inventory sales transactions

Group C: Methods equivalent to the traditional transaction 3 methods in the law and *other 7 methods in the cabinet order*

(Article 66-4(2)-2)

Group D: Methods equivalent to methods consistent with the traditional transactional 3 methods in the law and *other 7 methods in the cabinet order*

(Article 66-4(2)-2)

Traditional 3 methods : CUP,RP, CP

*Other 7 methods : (PS) Comparable PS, Contribution PS, RPSM (TNMM)*

*TNMM(Export), TNMM(Import),*

*TNMM(Export& BerryRatio)*

*TNMM(Import& Berry Ratio)*

## All TPMs

### [Inventory Sales Transaction]

#### Group A (Original method)

CUP method, RP method, CP method

*PS method, TNMM(Cabinet order 39-12(8)1~3)*

#### Group B (Consistent method)

Methods consistent with CUP, RP, CP

*Methods consistent with PS, TNMM (Cabinet order 39-12(8)4)*

★ Select the most appropriate method in Group A and Group B

### [Non Inventory Sales Transaction]

#### Grope C (Equivalent method)

Methods equivalent to CUP, RP, CP

*Methods equivalent to PS, TNMM (Cabinet order 39-12(8)1~3)*

#### Grope D (Equivalent method to consistent method)

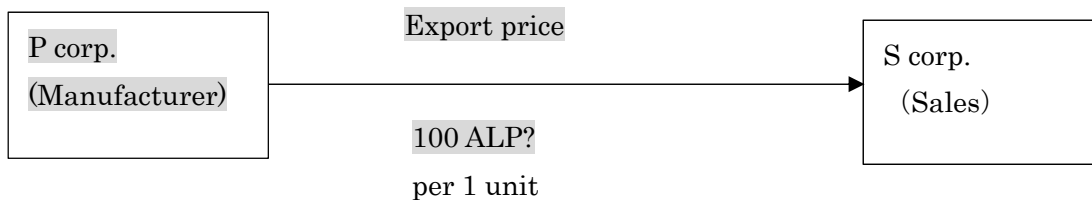
Methods equivalent to methods consistent with CUP, RP, CP

*Methods equivalent to methods consistent with PS, TNMM (Cabinet order 39-12(8)4)*

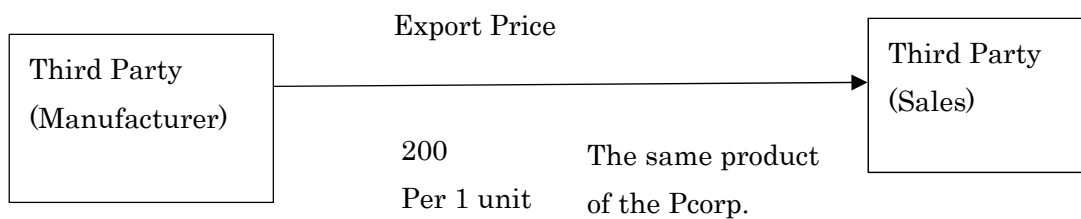
★ Select the most appropriate method in Group C and Group D

## The application formula of Comparable Uncontrolled rice Method (CUP)

### ① Fact finding of Tested Party



### ② Fact finding of Third Party



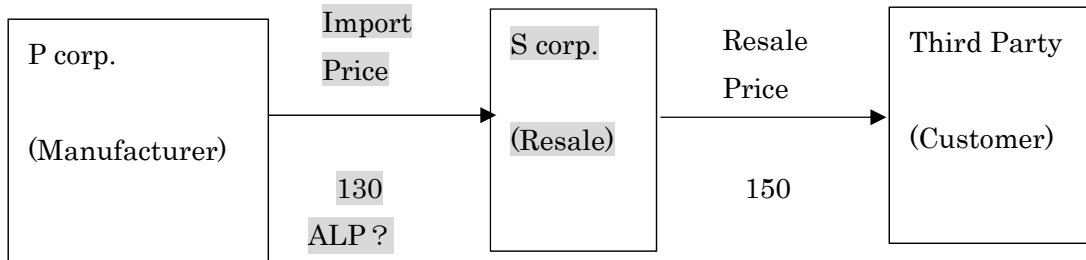
### ③ ALP = Third Party's Export Price

$$= 200$$

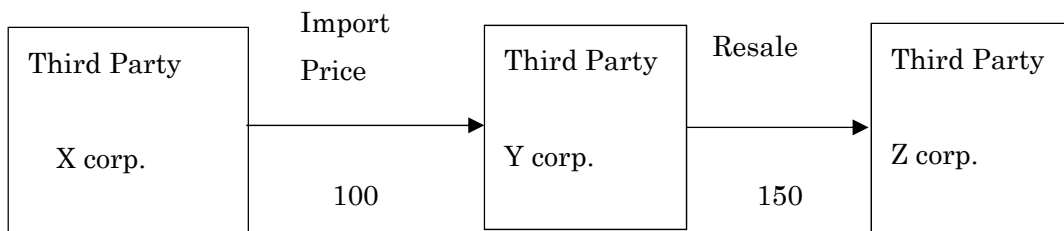
### ④ TP taxation = 200 - 100 = 100

## The application formula of Resale Price Method (Resale Price)

### ① Fact Finding (Tested Party Transaction)



### ② Fact Finding (Third Party Transaction)



③ Normal Profit Ratio in the third party  
= GM / Resale  
= 50 / 150 = 0.333 (33.3%)

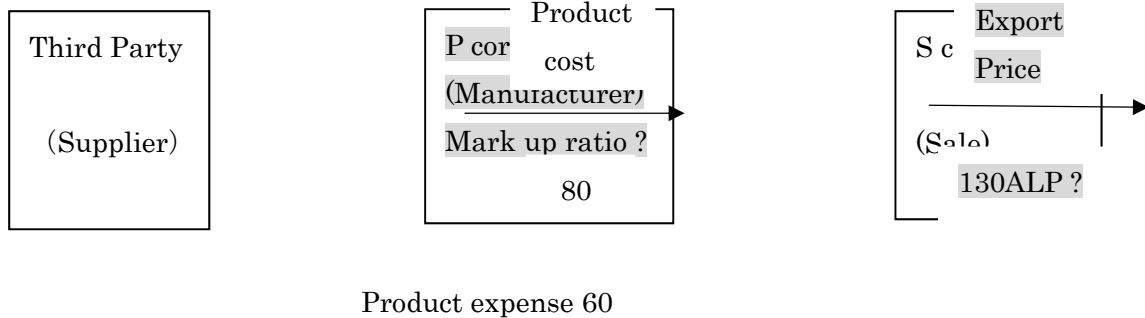
④ Normal Profit in the Tested Party  
= Resale × Normal Profit Ratio(③)  
= 150 × 33.3% = 49.95

⑤ ALP (= S corp's Import Price) = Resale price - 49.95  
= 150 - 49.95 = 100.05

⑥ TP taxation = 130 - 100 = 30

## The application formula of Cost Plus Method

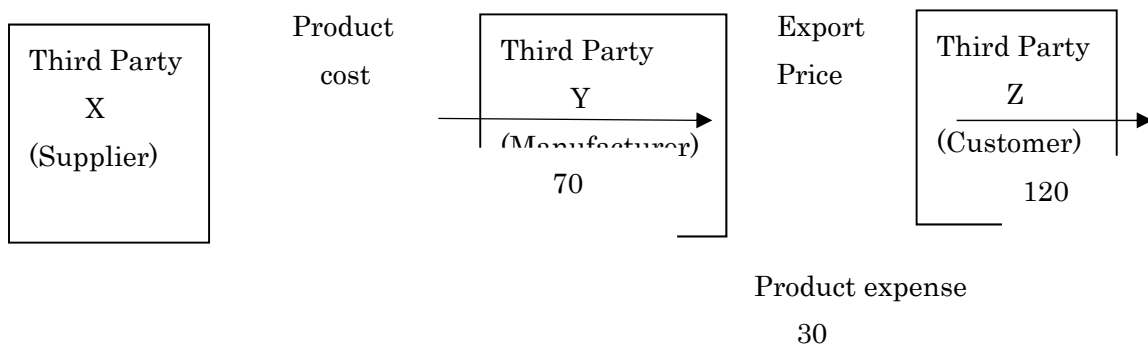
### ① Fact Finding of Tested Party Transaction



$$\text{Total Cost} = \text{Product Cost} + \text{Product Expense}$$

$$= 80 + 60 = 140$$

### ② Fact Finding of Third Party Transaction



$$\text{Normal Profit Ratio} = \text{GM} / \text{Total Cost}$$

$$= (120 - (70 + 30)) / 70 + 30$$

$$= 20 / 100 = 0.2 \text{ (20\%)}$$

### ③ Normal Profit = Total Cost (Tested Party) × Normal Profit Ratio

$$= 140 \times 20\% = 28$$

$$\text{④ ALP of P Corp.} = 80 + 60 + 28 = 168$$

$$\text{⑤ TP taxation} = 168 - 130 = 38$$



**The application formula of Contribution PS ( Division Factor :Personnel Expense & Depreciation)**

① Combine the operating margin of related party P and related party S

Operating Margin (P corp.)	80	Operating Margin (S corp.)	120
-------------------------------	----	-------------------------------	-----

Combined Operating Margin for dividing into 2 related parties  
 = 80 + 120 = 200

② Computing the personnel expense and depreciation cost of P corp. and S corp.

	Personnel Expense	Depreciation Cost	Total
P corp.	10	20	30
S corp.	3	7	10

The ratio of Personnel Expense & Depreciation Cost is 3 : 1.

③ Combined Operating Margin is divided into 2 related parties

Operating Margin (P Corp.)	150	Operating Margin (S Corp)	50
-------------------------------	-----	------------------------------	----

**P : S 3 : 1**

**The application formula of Comparable Profit Split method : CPSM)**

- ① Combine the Operating Margin of related party P corp. and related party S corp.

Operating Margin (P corp)	Operating Margin (S corp)
60	90

Operating Margin to be divided =  $60 + 90 = 150$

- ② The dividing ratio of Operating Margin has to be computed by using the division of operating margin of non-related party

Operating Margin (A corp.) 200	Operating Margin (B corp.) 100
-----------------------------------	-----------------------------------

**Dividing ratio based on the non-related parties**  
**= 2 : 1**

- ③ Application of the result of division in the non-related parties

Operating margin (P corp.) 100	Operating margin (S corp.) 50
-----------------------------------	----------------------------------

**P : S = 2 : 1**

## The application formula of RPSM

- ① Combining the operating profit in each related party on related party transaction

<b>P corp Operating Profit</b> <b>(40)</b>	<b>S corp Operating Profit</b> <b>(60)</b>
---	---

※ Financial Data may be changed because of only related party transaction.

- ② Basic profit should be divided into each related party by comparable transaction

<b>P corp</b> <b>Basic Profit</b> <b>(25)</b>	<b>S corp</b> <b>Basic Profit(15)</b>
---	--

※ Basic profit means the operating profit obtained without significant intangible assets in each countries' operating profit.

- ③ Residual profit (= Combined Operating Profit – Basic Profit) should be divided into each related party.

<b>P corp.</b> <b>Residual Profit</b> <b>(40)</b>	<b>S corp</b> <b>Residual Profit</b> <b>(20)</b>
---	--

※ Division of residual profit is conducted on the basis of the ratio of share (or contribution) in the significant intangible assets in each related party. (R&D etc.)

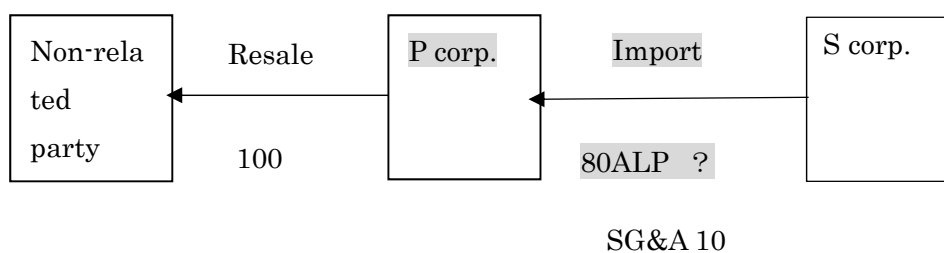
- ④ Last profit division is conducted.

<b>P corp. initial Operating Profit</b> <b>(40)</b>	<b>Pcorp.Increased Operating Profit</b> <b>(25)</b>	<b>S corp.Operating Profit</b> <b>(35)</b>
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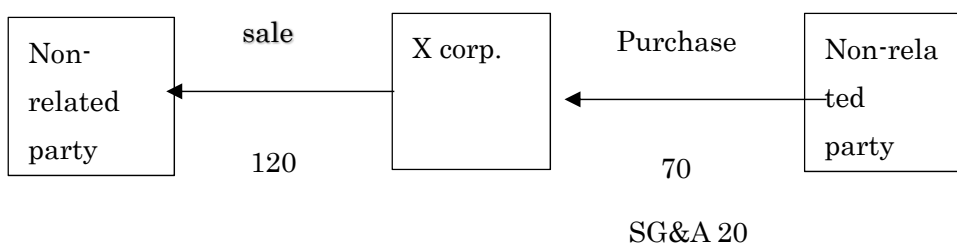
## The application formula of TNMM (Import Case)

in the case where the purchase of inventories is a foreign related transaction

### ① Tested Party Transaction



### ② Comparable Transaction



③ Resale Price = 100 (=Sales of Pcorp)

④ Sales Operating Margin Ratio of X Corp.

$$\text{Resale (X corp.)} = 120$$

$$\text{SOMR (X corp.)} = 30/120 = 0.25 \text{ (25\%)}$$

⑤ ALP (import price of P corp.)

$$= \text{Resale Price of P corp.} - (100 \times 0.25 + 10)$$

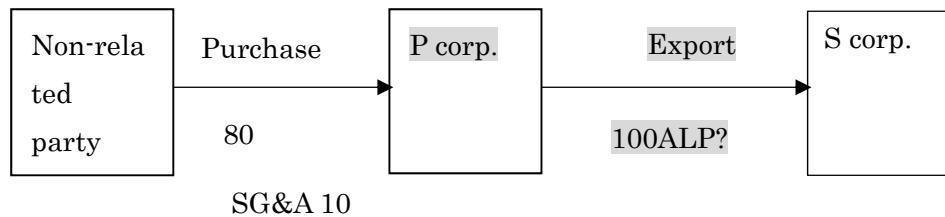
$$= 100 - 35 = 65$$

⑥ TP taxation =  $80 - 65 = 15$

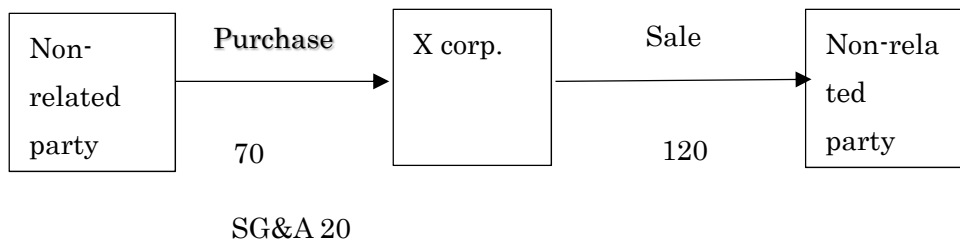
**The application formula of TNMM (EXPORT case)**

in the case where the sale of inventories is a foreign related transaction

① Tested Party Transaction



② Comparable Transaction



③ Acquisition Cost = 80 (=Purchase of P corp.)

④ Total Cost Operating Margin Ratio of X Corp.

$$\text{TCOM (X corp.)} = 120 - (70 + 20) = 30$$

$$\text{Total Cost(X corp.)} = 70 + 20 = 90$$

$$\text{TCOMR (X corp.)} = 30/90 = 0.333 \text{ (33.3\%)}$$

⑤ **ALP (Export price of P corp.)**

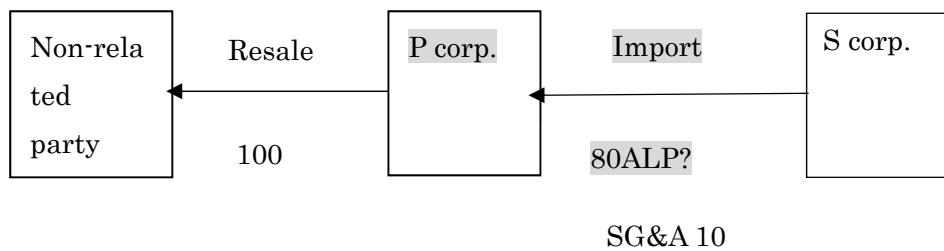
$$= \text{Acquisition Cost} + (80 + 10) \times 0.333 = 109.97$$

⑥ TP taxation = 109.97 - 100 = 10

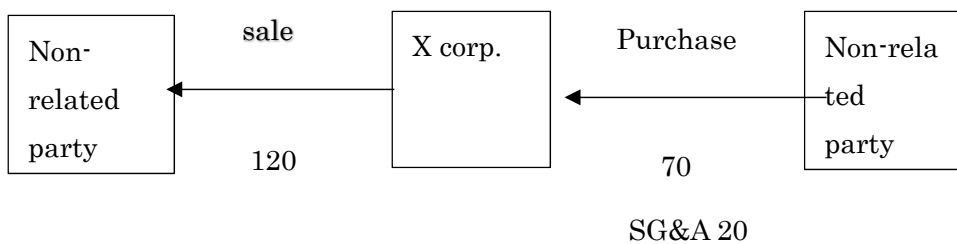
## The application formula of TNMM ( 1 st Berry-ratio method)

in the case where the purchase of inventories is a foreign related transaction and APL is computed based on Berry-ratio)

### ① Tested Party Transaction



### ② Comparable Transaction



③ Resale Price = 100 (=Sales of Pcorp)G

④ SG&A expense Sales Gross Margin Ratio of X Corp.

$$\text{GM of X corp.} = 120 - 70 = 50$$

$$\text{SG\&A expense} = 20$$

$$\text{Berry-ratio} = 50/20 = 2.5 (250\%)$$

⑤ ALP (import price of P corp.)

$$= \text{Resale Price of P corp.} - (10 \times 2.5)$$

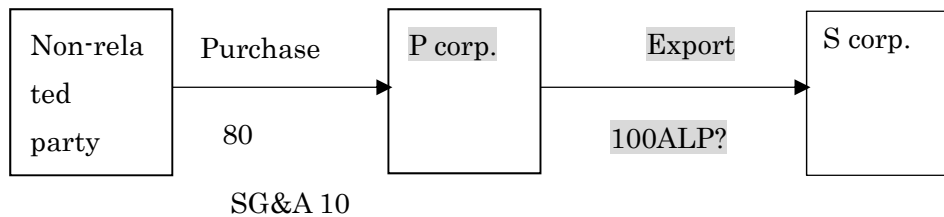
$$= 100 - 25 = 75$$

⑥ TP taxation = 80 - 75 = 5

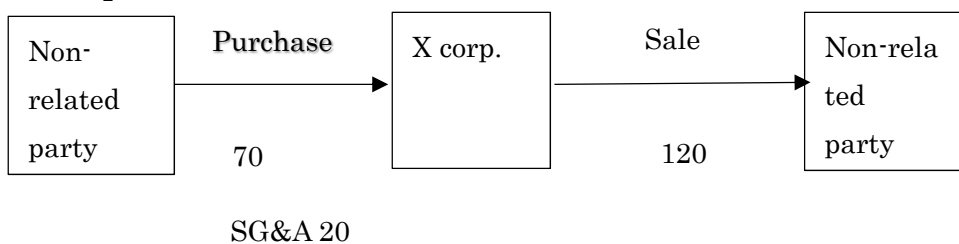
## The application formula of TNMM (2<sup>nd</sup> Berry ratio method)

in the case where the sale of inventories is a foreign related transaction and APL is computed based on Berry-ratio)

### ① Tested Party Transaction



### ② Comparable Transaction



③ Acquisition Cost = 80 (=Purchase of P corp.)

④ SG&A expense Sales Gross Margin Ratio of X Corp.

$$\text{GM of X corp.} = 120 - 70 = 50$$

$$\text{SG\&A expense} = 20$$

$$\text{Berry-ratio} = 50/20 = 2.5 (250\%)$$

⑤ ALP (Export price of P corp.)

$$= \text{Acquisition cost} + (10 \times 250\%) = 80 + 25 = 105$$

⑥ TP taxation = 105 - 100 = 5

Article 66-4(2). Arm's Length Price means the amount that is computed, corresponding to which transaction in the said respective items the foreign related transaction falls under, by the most appropriate method among the methods, which are stipulated in such each item, for computing the amount of considerations, which would be to be paid for such foreign related transaction if such foreign transaction is carried out under a common condition of transactions between non-related business parties, taking into consideration facts and circumstances such as the contents of such foreign-related transaction and functions performed by the parties concerned of such foreign-related transaction:

- (i) Sale or purchase of inventory: following methods.
  - (a) Comparable uncontrolled pricing method. The comparable uncontrolled method is the method which adopts with any necessary adjustments the uncontrolled market price for the same goods. That is to say, this method means the method under which the amount corresponding to an amount of payment for a transaction, in which a seller and purchaser with no special relations each other trade inventories of same kind under conditions in transaction process, the trade volume and others similar to those of the said foreign-related transaction, is treated as the amount of payment for the said foreign related transaction;
  - (b) Resale price method. This is the method taking the price at which the goods are sold by the seller to independent customers (resale price) and subtracting from normal mark-up for the sale by the original vendor. That is to say, this method means the method under which the amount computed by deducting the amount of ordinary profits (meaning the amount computed by multiplying the resale price mentioned later by an ordinary profit ratio prescribed by Cabinet Order) from the amount of payment for sales, in which the purchaser of inventories in a foreign related transaction sells the said inventories to persons without special relations, (hereinafter referred to in this paragraph as "resale price") is treated as the amount of payment for the said foreign-related transaction;
  - (c) Cost plus method. The cost plus method means the method taking the vendor's cost and adding an appropriate mark-up calculated on a normal profit ratio for the sale by the original vendor and thus for the purchase by the seller. That is to say, Cost plus method means the method under which



the amount computed by adding the amount of ordinary profits (meaning the amount computed by multiplying the acquisition cost mentioned later by an ordinary profit ratio prescribed by Cabinet Order) to the amount of acquisition cost resulted from activities such as purchase and production made by seller of inventories in a foreign related transaction is treated as the amount of payment for the said foreign related transaction; or

- (d) Methods equivalent to those stated in (a) to (c) and other methods prescribed by Cabinet Order.
- (ii) Transactions other than those stated in the preceding item: method equivalent to those listed in (a) to (d) of the said item.

**Cabinet Order 39-12 (8)**

- (1) Profit split method. It is a method that the amount, which is computed by one of the methods, listed below, as if the income from acquisitions or sales (hereinafter referred to as “sales etc.”) through purchases, productions or other transactions of inventories pertaining to a foreign related transaction, which were made between a corporation and its foreign related person, belonged to those persons, is deemed as the price of the foreign-related transaction (Cabinet Order 39-12(8)(i)).
  - (i) Comparative profit split method. It is a method that the income of a corporation and the income of its foreign related person are computed as if their combined income were allocated to those persons in proportion to the ratio of income allocation pertaining to sales etc., which are carried out between a corporation and its non-related person (referred to as a “comparable transaction”) with respect to the same kind of inventories as or inventories similar to inventories traded in a foreign related transaction. (Cabinet Order 39-12 (8)(i)(a))
  - (ii) Contribution profit split method. It is a method that the combined income between a corporation and its foreign related persons are allocated those persons in proportion to the amount of expenses paid by the respective persons, the value of fixed assets used by the respective persons, or other factors concerning those persons.
  - (iii) Residual profit split method. It is a method that income computed in step (a) and step (b) are totaled in each a corporation and its foreign related persons. Step (a) the income on a corporation and its foreign related person computed based on the proportion on the sales, etc., by non-related person (referred to as a “comparable transaction”) with respect to the same

kind of inventories or similar inventories etc. Step (b) the amount computed as if the balance between the amount of the income from sales etc. of inventories pertaining to the foreign related transaction, which were made between the corporation and the foreign related person, and the sum of the respective amounts mentioned in (a) (referred to as “residual profit” etc.”) were allocated to those persons in proportion to the amount of expenses paid by the respective persons, the value of fixed assets used by the respective persons, or other factors concerning those persons that are enough to assume the extent of contribution to the generation of the residual

(2) Transactional net margin method. It is a method that the price of a foreign related transaction is computed on the operating margin pertaining to a comparable transaction. And the method specifically means the following methods by the classification of cases.

(i) The case where the purchase of inventories is a foreign related transaction. It is a method that the amount computed by deducting, from the price of sales (referred to as a “resale price”) of inventories pertaining to a foreign related transaction that were made to a non-related person by the buyer of such inventories, the amount obtained by adding the amount of sales cost and general administrative expenses, which are spent for the sales of the inventories pertaining to the foreign related transaction, to the amount, which is computed by multiplying the resale price by the ratio of the amount mentioned in (a) below over the amount mentioned in (b) below, is regarded as the price of the foreign related transaction. (Cabinet Order 39-12(8)(ii))

(a) The total amount of operating profits raised from the sales of inventories pertaining to a comparable transaction (meaning a transaction that a reseller sells, to a non-related person, the same kind of inventories as or inventories similar to the inventories pertaining to the foreign related transaction).

(b) The total amount of receipts from the sales of inventories pertaining to the comparable transaction.

(ii) The case where the sale of inventories is a foreign related transaction. It is a method that the amount computed by adding, to the amount of cost for the acquisition (referred to as an “amount acquisition”) of inventories pertaining to a foreign related transaction that was made by the seller of the said inventories, the amount obtained by adding the amount, which is

computed multiplying the amount mentioned in (a) below by the ratio of the amount mentioned in (b) below over the amount mentioned in (c) below, to the amount mentioned in (a) below is regarded as the price of the foreign related transaction.

(a) The sum of the amounts mentioned below:

- a. the amount of acquisition cost, and
- b. the amount of sales cost and general and administrative expenses, which are spent for the sales of the inventories pertaining to the foreign related transaction.

(b) The total amount of operating profits raised from the sales of inventories pertaining to a comparable transaction.

(c) The amount obtained by deducting the amount mentioned in (b) above from the total amount of receipts from the sales of inventories pertaining to the comparable transaction.

Besides, if there are, between the comparable transaction and the foreign related transaction, differences in function performed by the seller or in other factors, the ratio is used after necessary adjustments have been made with respect to the margin of ratio caused by the differences.

(iii) The case where the purchase of inventories is a foreign related transaction (1st Berry Ratio Case). It is a method that the amount computed by deducting from the price of sales (referred to as a "resale price) of inventories pertaining to a foreign related transaction that are made to a non-related person by the buyer of such inventories, the amount, which is computed by multiplying SG&A expense of tested party by the ratio (Berry Ratio) of the amount mentioned in (a) below over the amount mentioned in (b) below, is regarded as the price of the foreign related transaction.

(a) The total amount of Gross profits raised from the sales of inventories pertaining to a comparable transaction

(b) The SG&A expense of Comparable Corporation pertaining to the comparable transaction.

(iv) The case where the sale of inventories is a foreign related Transaction(2nd

Berry Ratio Case). It is a method that the amount computed by adding, to the amount of cost for the acquisition (referred to as an “amount acquisition”) of inventories pertaining to a foreign related transaction that was made by the seller of the said inventories, the amount, which is computed by multiplying the SG&A expense of tested party by the ratio (Berry Ratio) of the amount mentioned in (a) below over the amount mentioned in (b) below is regarded as the price of the foreign related transaction.

- (a) The total amount of Gross profits raised from the sales of inventories pertaining to a comparable transaction.
- (b) The SG&A expense of Comparable Corporation pertaining to the comparable transaction.

(3) Methods equivalent to the methods mentioned in (1) and (2 above)

# ***Basis of International Taxation***

*~From Experience of Japan~*

**Hideaki ISHIGURO**

**JICA Expert on International Taxation**

## **Contents**

- TOPIC 1 Framework of International Taxation of Japan
- TOPIC 2 Securement of Tax Jurisdiction
- TOPIC 3 Prevention of International Tax Avoidance
- TOPIC 4 Elimination of International Double Taxation
- TOPIC 5 Tax Treaties of Japan

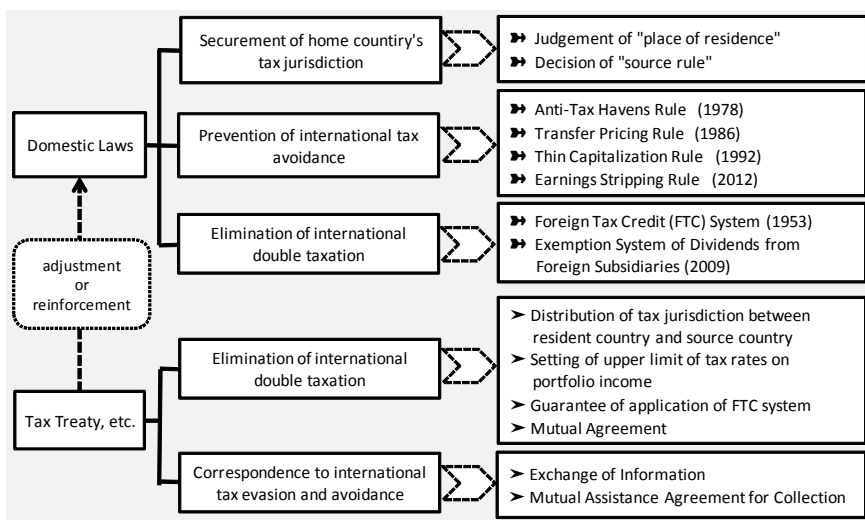
# TOPIC 1

## FRAMEWORK OF INTERNATIONAL TAXATION OF JAPAN

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### Framework of International Taxation of Japan



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## TOPIC 2

### *SECUREMENT OF TAX JURISDICTION*

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## Competitive International Tax Jurisdiction

### ■ Residence Jurisdiction

- based on **personal nexus with a person** who earns income
- tax on world-wide income

### ■ Source Jurisdiction

- based on **physical connection with activities** which produce income
- tax on domestic source income

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## Categories of Taxpayers and Scope of Taxation of Japan

Taxpayer			Scope of income subject to tax
Individual	Resident	Individual who has domicile or temporary residence for 1 year or more in Japan	world-wide income
	Non-Resident	Individual other than Resident	only domestic source income
Legal entity	Domestic Legal Entity	Legal entity which has headquarter or main office in Japan	world-wide income
	Foreign Legal Entity	Legal entity other than Domestic Legal Entity	only domestic source income

(note) There is sub category of "Non-Permanent Resident" in "Resident" of this table, but skipped here.

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## Source Jurisdiction and Taxation Methods

type of inbound investment	character of activity	method of taxation	tax base	method of tax payment
direct	positive	comprehensive	net	self-assessment
portfolio	passive	withholding	gross	withholding

(Note)

Out of inbound investment which results in domestic source income, direct one accompanies "control" and portfolio one, on the other hand, does not.

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## 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)

## Permanent Establishment

### ■ Basic Rule of Source Jurisdiction on Business Income

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, 1<sup>st</sup> sentence)

### (Note)

“Permanent Establishment” has strong nexus with the country where it is located, so its business activity is subject to comprehensive taxation as positive direct investment.

## Permanent Establishment

### ■ Types of PE (OECD Model Tax Convention, Article 5)

- **Branch 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.
- **Construction PE**> A building site or construction or installation project constitutes a permanent establishment only if it lasts more than twelve months.
- **Agent 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.

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## Profits Attributable to PE

### ■ Entire Income Principle

In case that a foreign corporation owns a PE domestically, **all of its domestic source income shall be included in such PE's income** and subject to comprehensive taxation.

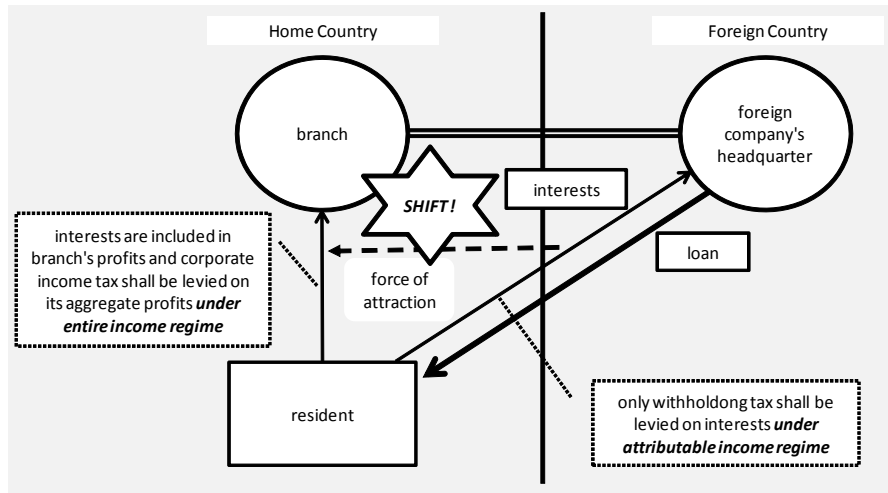
### ■ Attributable Income Principle

In case that a foreign corporation owns a PE domestically, **only the income attributed to such PE shall be considered to be such PE's income** and subject to comprehensive taxation .

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## Profits Attributable to PE



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## Profits Attributable to PE

### ■ Attributable Income Principle in OECD Model

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, 2<sup>nd</sup> sentence)

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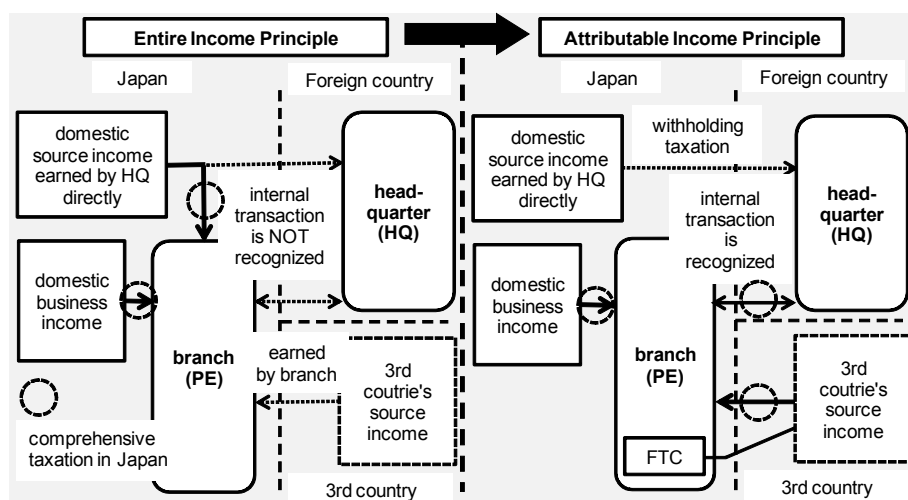
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# Profits Attributable to PE

## ■ 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, **if it were a separate and independent enterprise engaged in the same or similar activities under the same or similar conditions**, 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)

## Difference between Entire Income Principle and Attributable Income Principle



## Taxation of Japan on Foreign Corporations ~ Entire Income Regime ~ (current)

type of income	classification of foreign corporaion	corporation which owns PE domestically		corporation which does not own PE domestically	withholding tax rates
		branch PE	construction PE or agent PE		
① business income				non-taxable	no (general)
② income from operation or retention of asset					
③ income from disposition of asset				income from disposition of real property, etc.    no	
④ other domestic source income					
⑤ compensation for providing business of personal service					20.420%
⑥ rent of real property, etc.					20.420%
⑦ interest, etc.					15.315%
⑧ dividend, etc.					20.420%
⑨ interest of loan					20.420%
⑩ loyalty, etc.					20.420%
⑪ award for advertising of business					20.420%
⑫ pension based on life insurance contract, etc.					20.420%
⑬ benefit compensation of regularly-accumulated deposit, etc.					15.315%
⑭ distribution of profits based on anonymous association contract					20.420%

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shaded area is subject to corporate income tax (comprehensive taxation)

portfolio income of foreign corporation's headquarter is deemed to be one from direct investment and taxed in that manner

attributed to domestic business

separate withholding taxation

## Taxation of Japan on Foreign Corporations ~ Attributable Income Regime ~ (April, 2016 ~)

type of income	classification of foreign corporaion	corporation which owns PE domestically		corporation which does not own PE domestically	withholding tax rates
		① income attributed to PE	income not attributed to PE		
(business income)				non-taxable	no (general)
② income from operation or retention of asset					
③ income from disposition of asset					
④ other domestic source income					
⑤ compensation for providing business of personal service					20%
⑥ rent of real property, etc.					20%
⑦ interest, etc.					15%
⑧ dividend, etc.					20%
⑨ interest of loan					20%
⑩ loyalty, etc.					20%
⑪ award for advertising of business					20%
⑫ pension based on life insurance contract, etc.					20%
⑬ benefit compensation of regularly-accumulated deposit, etc.					15%
⑭ distribution of profits based on anonymous association contract					20%

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shaded area is subject to corporate income tax (comprehensive taxation)

separate withholding taxation

## **TOPIC 3**

### ***PREVENTION OF INTERNATIONAL TAX AVOIDANCE***

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## **Anti-Tax Haven Rule**

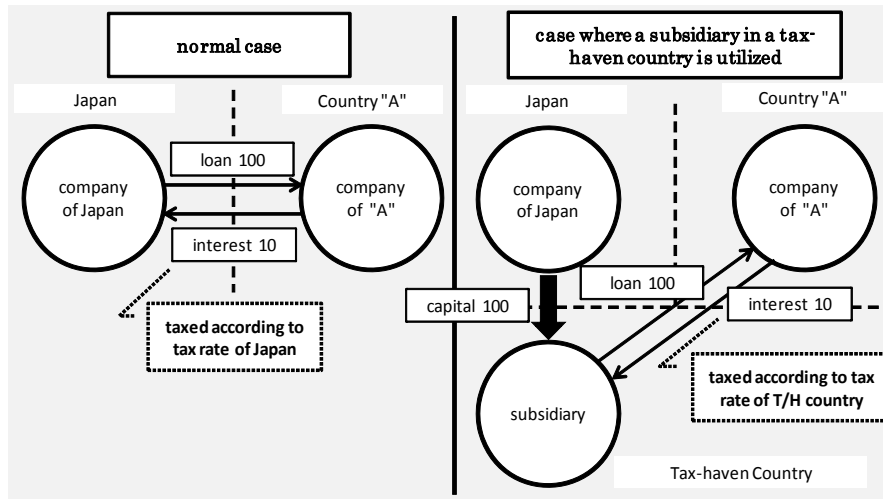
### **■ Problem**

A domestic corporations can avoid taxation of our home country and alleviate tax burden unfairly by making international transactions through its foreign subsidiaries (notably paper companies) located in tax haven countries.

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## Anti-Tax Haven Rule



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## Anti-Tax Haven Rule

### ■ Countermeasure

- Income of a foreign subsidiary on which tax burden level is 20% or less is considered as, and combined to one of its domestic parent corporation, and taxed in our home country on usual tax rate basis
- But if a foreign subsidiary has enough economic rationality under which it is established and does business in the tax haven country, this rule shall not be applied (except income from operation of specific monetary assets).

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## Transfer Pricing Rule

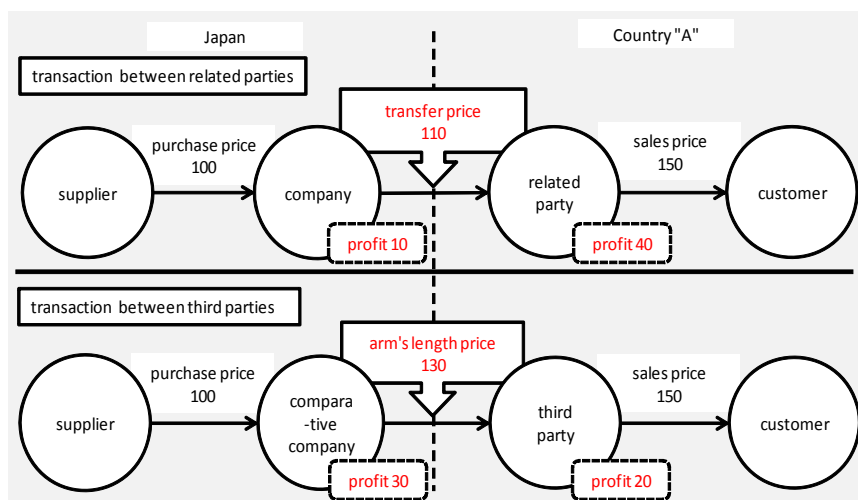
### ■ Problem

A corporation in our home country can transfer its profit and taxable income to its foreign related corporation by setting up transactional price different from normal price between such two related parties (transfer price).

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## Transfer Pricing Rule



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## Transfer Pricing Rule

### ■ Countermeasure

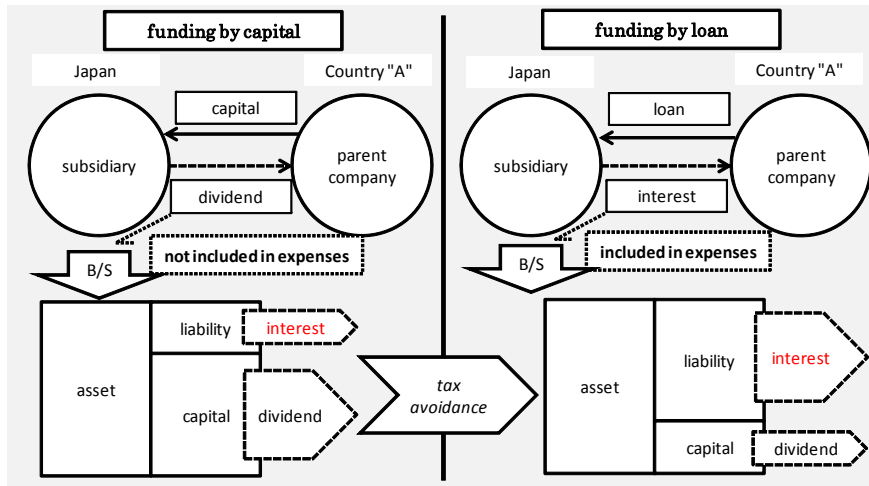
Income of a corporation in our home country shall be calculated and taxed as if its international transaction between its related foreign parties were made at usual transactional price (arms' length price).

## Thin Capitalization Rule

### ■ Problem

In case of a corporation in our home country is financed by its foreign related party, it can alleviate its domestic tax burden by intentionally decrease capital infusion and increase borrowing from the related corporation, because dividends on capital cannot be deducted as expenses, but, on the other hand, interests on borrowing can.

## Thin Capitalization Rule



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## Thin Capitalization Rules

### ■ Countermeasure

In case that debt of a domestic corporation exceeds triplication of capital equity owned by its foreign parent corporation, etc., Interests corresponding to such excess part of the debt shall not be deductible as expenses for tax purposes.

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Basis of International Taxation

## Earnings Stripping Rule

### ■ Problem

A corporation in our home country can alleviate domestic tax burden by intentionally setting debt from a related foreign party and allocating excessive interests as expenses in calculating its taxable income, without having any effect on total revenue and expenses of the entire related parties' group.

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## Earnings Stripping Rule

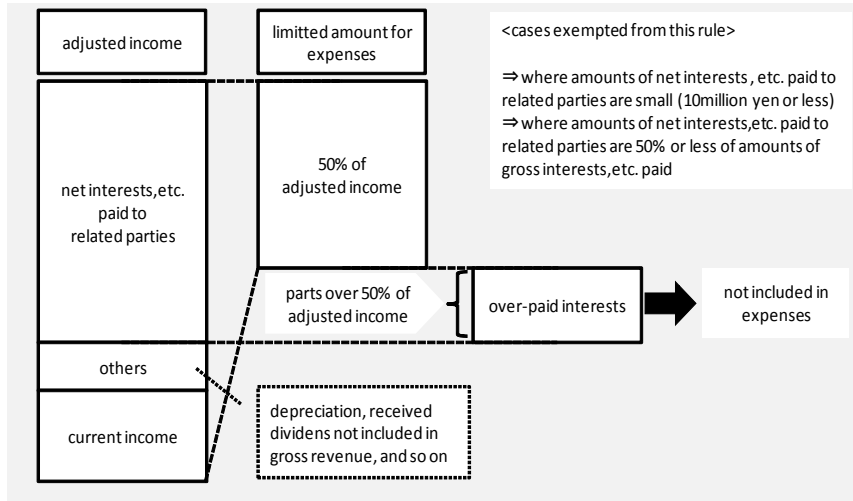
### ■ Countermeasure

Parts over 50% of the adjusted income of a domestic corporation out of its net interests, etc. paid to its related foreign parties shall not be deductible as expenses for tax purposes.

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# Earnings Stripping Rule



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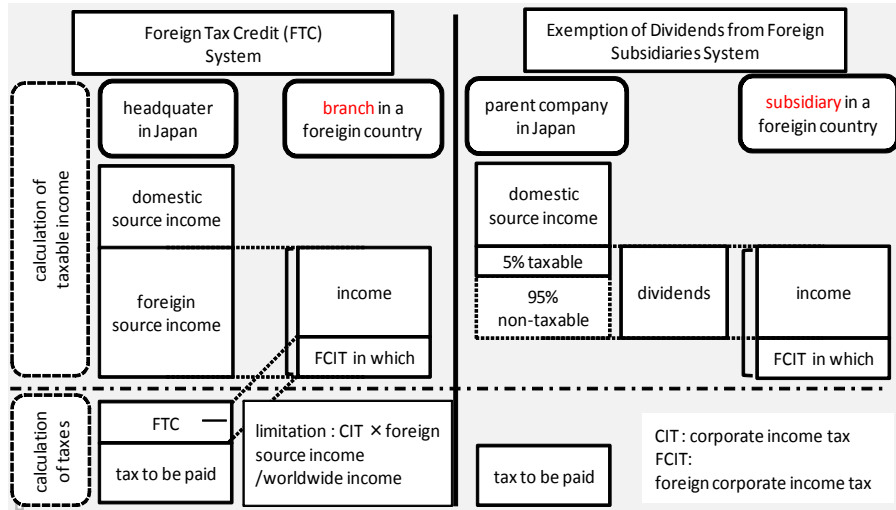
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## TOPIC 4 ELIMINATION OF INTERNATIONAL DOUBLE TAXATION

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## Rules for Prevention of International Double Taxation



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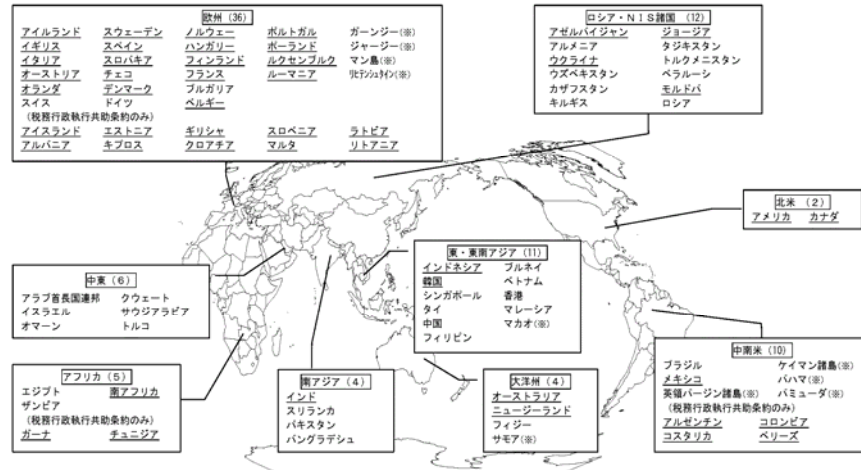
## TOPIC 5 TAX TREATIES OF JAPAN

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# Network of Tax Treaties of Japan

Total 64 treaties with 90 countries or regions (as of May 1<sup>st</sup>, 2015)



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# Network of Tax Treaties of Japan

Category	Main purposes	Number of treaties, etc.	Number of countries, etc.
Tax Treaty	eliminating international double taxation and counteracting tax evasion and tax avoidance, etc.	53	64
Tax Information Exchange Agreement	exchange of information on tax	10	10
Convention on Multiple Administrative Assistance in Tax Matters	mutual assistance on exchange of information, tax collection, and delivery of papers and documents, etc.	1	48 *

\* in which 16 countries have not yet concluded tax treaties with Japan

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Country or Area	TT	IE	MA	Country or Area	TT	IE	MA	Country or Area	TT	IE	MA	Country or Area	TT	IE	MA
Europe (36)			Malta				Zambia					Macau			
Albania				Netherlands				Russia, NISs (12)			Malaysia				
Austria				Norway				Armenia				Philippines			
Belgium				Poland				Azerbaijan				Singapore			
Bulgaria				Portugal				Belarus				Thailand			
Croatia				Romania				Georgia				Viet Nam			
Cyprus				Slovakia				Kazakhstan				Oceania (4)			
Czech				Slovenia				Kyrgyzstan				Australia			
Denmark				Spain				Moldova				Fiji			
Estonia				Sweden				Russia				New Zealand			
Finland				Switzerland				Tajikistan				Samoa			
France				United Kingdom				Turkmenistan				North America (2)			
Germany				Middle and East (6)				Ukraine				America			
Greece				Israel				Uzbekistan				Canada			
Guernsey				Kuwait				South Asia (4)			Latin America (10)				
Hungary				Oman				Bangladesh				Argentina			
Iceland				Saudi Arabia				India				Bahamas			
Ireland				Turkey				Pakistan				Belize			
Isle of Man				United Arab Emirates				Sri Lanka				Bermuda			
Italy				Zambia				East Asia, East and South Asia (11)			Brazil				
Jersey				Africa (5)				Brunei				British Virgin Islands			
Latvia				Egypt				China				Cayman			
Liechtenstein				Ghana				Hong Kong				Colombia			
Lithuania				South Africa				Indonesia				Costa Rica			
Luxembourg				Tunisia				Korea				Mexico			

TT:Tax Treaty (62), IE:Tax Information Exchange Agreement (8), MA:Convention on Multilateral Administrative Assistance in Tax Matters (36)

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Basis of International Taxation

# PRECEDENTS IN TERMS OF TRANSFER PRICING

Certified Public Tax Accountant Toshinari KODERA  
Referring to the Thesis “Conditions of Comparability  
in TP” by Prof. Toshihisa Tanaka of NTC.2

## 1 Graphic Software case

### **The point at issue**

Japanese taxpayer is the company in doing the sales support of computer soft. Service commission is received by making an offer of taxpayer stipulated in the business charge contract in terms of making an offer of support etc.

The service commission (=1.5% × sales amount + cost) is **Arm's Length Price** or not ?

The lawsuit

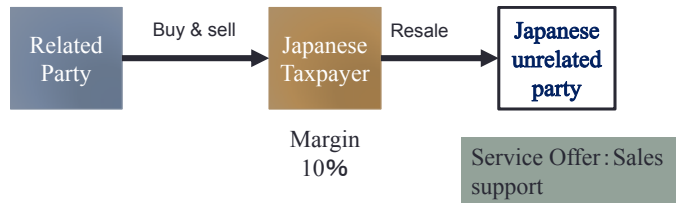
Tokyo district court •2007, 12.7 (Taxpayer **lost** this case)

Tokyo high court 2008, 10.30 (Taxpayer **won** this case)



## Trade Chart 1

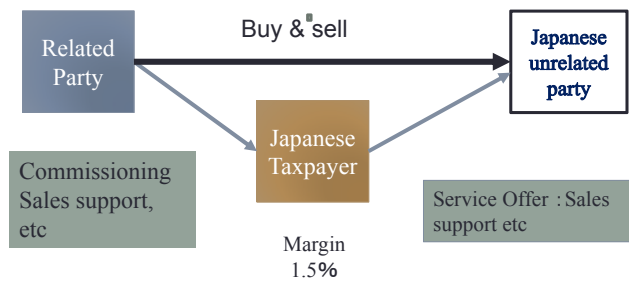
Original trading



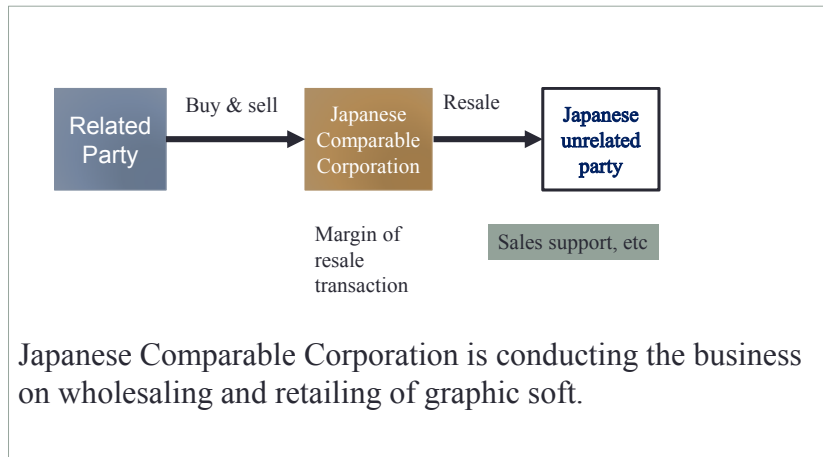
Japanese taxpayer had been originally conducted the resale business in terms of computer software.

## Trade Chart 2

The taxpayer has changed the trade style from Resale business to business commissioned trade style.



## Trade Chart 3



## Tokyo district court decision 1 : Comparability on Function & Risk (taxpayer)

- The plaintiff (taxpayer) had been visiting the wholesaler for introduction and explanation about sales promotion of existing products and presentation of new products.
- The plaintiff had been bearing the expense on marketing of products, making the marketing materials and conducting the marketing.
- The plaintiff had been supporting the sales promotion and advertisement of the products in Japan dealt by the related party in this case.
- The plaintiff had been offered the training course of the products to the wholesaler, dealer, and end user.
- The plaintiff had been offered support service to the customer.
- The plaintiff had not been assuming the inventory risk and also not assuming the debt collection risk from the customer.

## **Tokyo district court decision 2 : Comparability on Function and Risk (Comparable corporation : CC)**

- CC is conducting wholesaling and retailing on graphic soft.
- CC is conducting the sales promotion activities such as products demonstration with wholesaler in potentiality customers and retailers.
- CC is doing support activities such as accepting and handling the questions and complaints from end users.
- CC is conducting advertising activities such as advertisement on web and trade paper, direct mail.
- CC transaction in this case is buy & sell transaction. But this transaction has no inventory risk because of adoption of sales to order system.
- CC has a lot of highly reliable customer such as large corp. in terms of a credit account. So, CC has a small number of Risk assumed.

## **Conclusion in Tokyo district court**

- By comparing the related party transaction in this case and the CC transaction in this case, we found that the two transactions have the character of same or similarity to fairly extent.

## Fact finding in Tokyo high court decision

- As to related party transaction in this case and comparable corporation transaction in this case, Tokyo high court nearly made fact-finding as well as Tokyo district court.

## Decision by Tokyo high court in terms of Comparability (Similarities on Function)

- Related party transaction in this case, based on the business charge contract, as performing the debt to the related party, conducts services such as the sales promotion to the wholesaler.
- The related party transaction can be construed as service offer transaction from legal point of view and also economic substance point of view.
- (But) CC transaction in this case is mainly resale transaction by buy and sell formula that CC in this case purchases the graphic soft being the object product.
- CC in this case support to the customer for sales promotion.
- (Therefore) An appellant (taxpayer) and CC in this case has clearly a lot of difference that cannot be disregarded in the function to be performed.

## Decision by Tokyo high court in terms of Comparability (Similarities on Risks)

- Appellant (taxpayer) does not assume the risk that remuneration falls below the necessary expenses. Because the appellant is getting the 1.5% of sales amount and the remuneration equivalent to all the allocation amount of direct, indirect and SG&A expenses arising at the time of offering service by the appellant.
- (But) the comparable corporation gets the profit if the sales amount exceeds the break-even point. On the contrary, if the sales amount falls below the break-even point, the comparable corporation suffers the loss. That is to say, the comparable corporation is conducting the trade by assuming the risk.
- (Therefore) the appellant (taxpayer) basically differs from the comparable corporation in terms of existence of the risk assumed.
- Even if the comparable corporation adopts the sales to order formula, the risk assumed by comparable corporation mentioned above is not changed.
- The Tokyo high court could not find out the certain evidence in recognizing the fact that the risk assumed was insignificant to be able to abstract in the trade of comparable corporation in this case.

## Difference : Tax office & Tokyo high court(!?)

### Points in Allegation of Tax office

- Sales support by taxpayer is the profit-source function.
- The similarity existed between taxpayer and comparable corporaion mainly because of the economic realities.

### Point in Decision of Tokyo high court

- Legal fomula as to whether the trade form is service offer trade or resale trade should be regarded as important.

Q Can tax office show the legal foundation as to insignificant difference on sales conduct between the taxpayer and comparable corporation ?

★Points at issue  
Tax treaties

Toshinari Kodera JICA Expert

*1 What is Tax Treaty ?*

*Tax treaty is a kind of Tax network concluded between State A (region) and State B (region). If the contents of Japanese tax law are different from the tax treaty, the stipulation of the Treaty should be applied with priority to the Japanese tax law.*

## ★Kinds of tax treaty

- Income tax treaty
- Inheritance tax treaty
- Agreement on tax Information exchange
- Mutual cooperation treaty on execution of tax administration

## ★History of tax treaty 1

- Prototype of tax treaty end of 19 c. Austria Hungary & Prussia
- But in order not to make the taxpayer, conducting business and investment activities in plural countries, get confused due to different tax laws, foundation of Model tax convention as a Model in each country was determined.
- 1920 In the League of Nations, theoretical & practical research was conducted.
- 1928 In the LN, the first Model convention : Madrid Model
- 1943 In the LN, Mexico Model
- 1946 In the LN, London Model

## ★ History of tax treaty 2

- 1963 OECD Model draft
- 1977 OECD Model
  
- 1980 UN Model
  - 2001,2011 Total revision
- 1992 OECD Model revision
  - 1995, 1997, 2000, 2003, 2005, 2008 & 2010 (Many times revised)

## 3 *The big purpose of Tax treaty*

### *(1) Avoiding double taxation*

#### *a) judicial double taxation*

*ex. Withholding taxation, etc.*

#### *b) economic double taxation*

*ex. Transfer pricing*

### *(2) Exchanging the information between the two countries*

### *(3) Recently some taxpayers are using the tax treaties as tools on international tax avoidance(OECD is conducting countermeasures in BEPS discussion).*



## 4 What is the Model of Tax treaty ?

*General tendency*

*Developed countries ➡ OECD model tax convention*

*Developing countries ➡ UN model tax convention*

## ★ Characteristics of OECD Model and significance of UN model

- Delegation in each countries discussed and agreed to avoid international double taxation in OECD model.
- OECD has been publicized the commentary disclosing the formal interpretation and concrete samples of the Model convention. In some cases some countries have reservation and opinion.
- Furthermore, incessant revisions have been conducting in response to economic and social circumstance.
- OECD fiscal committee have been energetically revising the Model convention and its commentary after some meeting.
- Many countries including Japan have been concluded their tax treaties in line with OECD Model Convention.
- However, in proportion to rising the economy in developing countries, assertion on respect of UN model has been increasing.

## *What is OECD model tax convention ?*

- 1 The OECD Model Convention has no compulsory legal power, and have a great influence on other country's tax treaty.*
- 2 Since the enactment of the OECD Model Convention, not less than 10 times revision has been done.*
- 3 The OECD Model Convention is favorable to developed countries restricting greatly the taxing right of source country.*

## *What is United Nations Model Convention ?*

*The UN model convention is favorable to developing countries recognizing a lot the taxing right of source countries.*

## ★Points at the time of Reading the Convention Clause(Japanese case)

Q1 The meaning of Residents are same between Japanese law and tax treaty?

	Japanese tax law	Tax treaty
Natural person	Resident	Resident
Company	Domestic Corporation	Resident

## ★What is Source jurisdiction and Residence jurisdiction

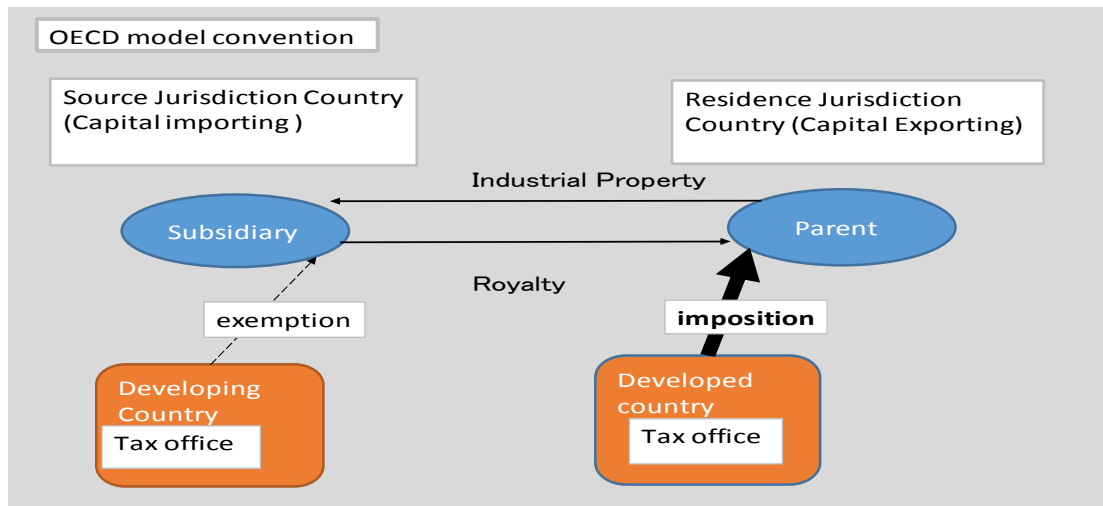
Q2 What is Source jurisdiction taxation ?

A2 In this principle, tax imposition is conducted at the country where **income** was occurred. The country is called the source jurisdiction.

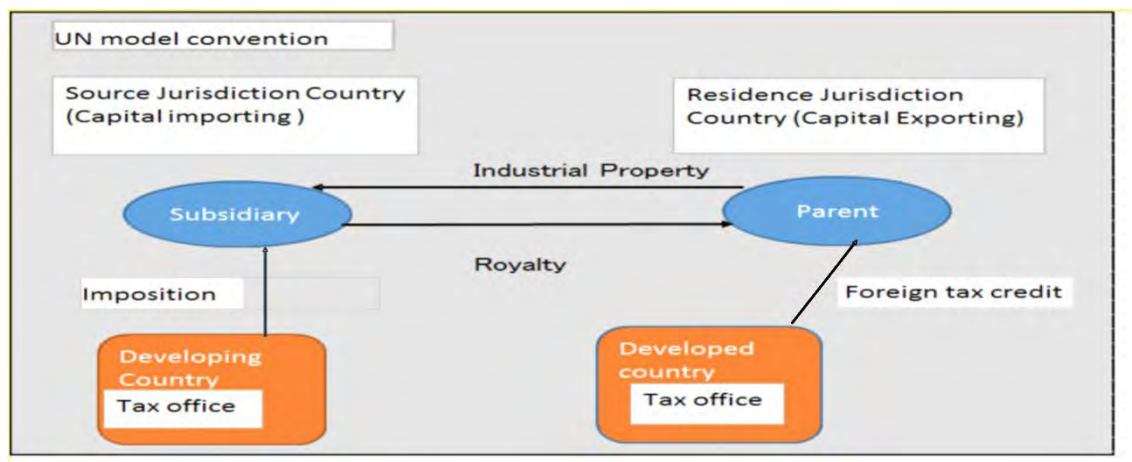
Q3 What is Residence jurisdiction ?

A3 In this principle, tax imposition is conducted at the country where **the person(or company) receiving the income** resides. The country is called the residence country of the income beneficiary.

## ★ *Function of the OECD Model Convention*



## ★ *Function of the UN Model Convention*



## Question

- Could you clarify the difference between judicial double taxation and economic double taxation ?
- Furthermore, tell us the examples.

## Object of OECD Model Convention

The object is to provide a means of settling on a uniform basis the most common problems that arise in the field in international “juridical double taxation”.

How about “economic double taxation” in this convention?

## Historical background

- The origin of the OECD Model Tax Convention is the discussion of avoiding international double taxation started from 1921 in the League of Nations.
- Fiscal committee was set up in 1956 March in the OEEC founded in 1948.
- From 1958 to 1961, the committee prepared four interim Reports entitled Draft Double Taxation Convention in Income and Capital.
- OECD was established formally in 1961 September.
- OECD announced the OECD Model Tax Convention and its commentaries in 1977.
- In 1992, new Model Tax Convention was publicized adopting the contents of report made from 1977. Later it has been revised sometimes.

## Influence of the OECD Model Convention

Since 1963, the OECD Model Convention has had wide repercussions on the negotiation, application, and interpretation of tax conventions.

First, OECD member countries have largely conformed to the Model Convention when concluding or revising bilateral conventions.

conformity: 準拠する

Second, the impact of the Model Convention has extended far beyond the OECD area (non-member countries).

Third, the worldwide recognition of the provisions of the Model convention have helped make the Commentaries on the provisions of the Model Convention a widely-accepted guide to the interpretation and application of the provisions of existing bilateral conventions.

## Special Execution Law for Tax treaty in JAPAN

- This law stipulates the procedure on application of Tax treaty.
- Formally it is called "the law in terms of special, etc. on income tax, corporate tax, and local tax accompanying the execution of Tax treaty"

## Reason for drawing up the procedural clause on Limitation on Benefit in Japan US tax treaty

The new Japan US treaty has introduced the privilege which reduce largely the withholding taxation on dividends.

Therefore the privilege clause (Art.22) has founded in order to avoid the treaty shopping on residents in the third party countries other than Japan and US.

The privilege clause says that the taxpayer can enjoy the privilege on condition of sufficiency of the requirement in terms of the privilege.

This privilege clause has adopted in the tax treaty for the first time.

## Contention :The relationship between Tax law & Internal Law

- Japan: Tax treaty has preference to internal law (Constitution Art.98)
- US: The constitution is the same rank as internal law. → principle of the back law preference

Constitution → Internal law 1 → internal law 2 (right is right ! Joke !!!)

## Q Preservation clause ?

- Tax reduction stipulations in internal tax laws can not be restricted by tax treaties.
- The reduction stipulations are such as exclusion (non taxation), exemption, deduction, credit, etc.
- Tax treaties works in favor of taxpayers, but does not work against taxpayers.
- That is to say, in the case that application of internal law compared to tax treaties is favorable to the taxpayer, application of provisions of internal law can be done than application of provisions of tax treaties.



## Question

- Japanese corp. paid royalties to Brazilian foreign corp.
- Withholding tax ratio on royalties in Japanese internal tax laws is 20%.
- But the tax treaty on Japan & Brazil Art.11② provides 25% in that case.
- In Japanese Constitution, treaty is prior to internal law.
- Therefore, Japanese corp. should be taxed 25% withholding tax ratio.
- This solution is OK or not ?

## Q Saving clause ?

- As long as there is no special provisions in the tax treaty, domestic imposition of tax to domestic taxpayers (including domestic corporation and US citizens) can not be influenced by provisions of tax treaties.

## Provision Article 1 (Persons covered)

### ★ Purport of OECD model Art.1

- In the beginning, tax treaty was applied to “citizen”.
- From 1963 treaty draft, “resident” was applied in the tax treaty.
- OECD model commentary Art.1 stipulates mainly the following points in terms of application of tax treaty to “resident”.
  1. Problems on application of tax treaty to partnership
  2. Problems on the treaty shopping in the case that not intended person enjoys the treaty benefits

## ★Contention Tax treaty can be applied to Partnership ?

- Partnership is not clarified in the OECD model.
- Taxation to Partnership is fundamentally as well as taxation to corporation in the country where Partnership is subject of tax payment in the internal tax law.
- In Japan, as Partnership is not deemed to be the subject of tax payment, the membership of the Partnership can be subject to tax.
- Japan US treaty provides for Partnership clause in Art. 4⑥, clarifying the treatment of Partnership including the treatment of LLC.

## ★Question

- Anti Tax Haven taxation rule in domestic tax law is against the controlled foreign companies provisions in the tax treaty ?

## Provision Article 2 (Tax covered)

### ★ Purport of OECD model Art.2

#### Purport

This article stipulates the kinds of taxes to clarify to be applied in this Model Convention.

The Model Convention shall apply to all the taxes to the income and property and to the local tax.

## Q Local tax like resident tax is subject to tax treaty ?

A1 In all tax treaties Japan has concluded, taxes which is equivalent to income tax and corporate tax are subject to tax treaties.

A2 Not less than 50% of the tax treaties stipulates the tax which is equivalent to resident tax.

## ★OECD Model Art.2 ②

- Taxes on income and on capital
- ➡All taxes imposed on total income, elements of income, etc.
- Q1 Social security charges are subject of tax treaty ?
- Q2 Extraordinary to Ordinary tax is subject of tax treaty ?

## ★ OECD MODEL Art.2 ②

2

- Q Penalties are the subject of the tax treaty ?
- Commentary Art. 2 ② Para 4
- “Countries are free to clarify this point in their bilateral negotiations.”

## ★ Comparison between OECD & UN in terms of Extraordinary tax

- OECD Art.2 Para ② commentary (5) is as same as UN Art.2 Para② commentary (5) ?
- Tax treaty can apply to Extraordinary tax ?

★Q Extraordinary Tax, Penalty, Social Security Charges are subject of Tax treaty ?

- How about UN model convention ?
- Japan-UN tax treaty ?
- Mongolia-china Tax treaty ?
- Mongolia-Russia Tax treaty ?
- Mongolia-Korea Tax treaty ?
- Mongolia-UK Tax treaty ?

Provision Article 3 (General Definitions)

## ★Contention “Vienna Convention on the Law of treaties” can be applied in the Tax treaty ?

- Can be applied !
  - Some construction of term not defined in tax treaty in Art. 3 Para.2 can be construed by context.
  - The context includes the followings in Vienna Convention
  - 1 Agreement among all the each country concerned linked with of the conclusion of the tax treaty
  - 2 Tax treaty related documents drawn up by country concerned
- Therefore, the context stipulated in the tax treaty includes the followings in addition to the text, such as “protocol”, “notes exchanged”, and “agreed minutes”.

## ★Purport of OECD model Art.3

### Purport

This Article stipulates the general prescriptions needed to interpretation of the terminology used in this Convention.

Prescription : 法規

If the terminology is not defined in any Articles in the tax treaty, the terminology can be construed based on the tax law in the State which tax treaty is applied.



## Provision Article 4 (Resident)

### ★★ Difference : OECD & UN model in Art.4

- “Limited Taxpayers” are excluded from Residents ?
- Are there any difference between OECD & UN ?

## ★★Contentions: Non restricted taxpayers and Restricted taxpayers

- Non restricted taxpayers = Residents : taxation on world wide income
- Restricted taxpayers = Non residents : taxation only on the domestic income

## ★ Purport of OECD model Art.4

### **Purport**

This Model Convention shall apply to persons who are residents of one or both of the Contracting States.

So whether the residents or not is very crucial for the application of the tax treaty.

Article 4 stipulates clarifies the meaning of “resident of a Contracting State”, and aims at resolving the double taxation problem (furthermore double resident problem).

In the case of the conflict on the interpretation of the “resident” between the two contracting countries, this Article will be a special rule for the resolution.

## *UN Model Double taxation Convention UN Commentary to Art.4(3), Para.10*

*It is understood that when establishing the “place of effective management” circumstances which may, inter alia, be taken into account are:*

- *the place where a company is actually managed and controlled;*
- *the place where the decision-making at the highest level on the important policies essential for the management of the company takes place;*
- *the place that plays a leading part in the management of the company from an economic and functional point of view, and*
- *the place where the most important accounting books are kept.*

### Q Restricted Tax payer is Resident or not ?

**OECD model convention** stipulates clearly that “Restricted Tax Payer” is excluded from the residents.

However **UN model convention** does not stipulate clearly about that point. ???

Cf. Resident ➔ *Non restricted tax payer* ➔ World wide income taxation  
Non resident ➔ *Restricted tax payer* ➔ Domestic source income

taxation

## Paragraph 2 of Article 4

This paragraph stipulates the dividing basis of resolving the “double resident” problem of **Individual Persons (NOT CORPORATION)**

- a) permanent Home (1st Criteria) • • • • ex) Family residence
- b) center of vital interest (2nd criteria)
- b) habitual abode(常習的住居)
- c) Nationality
- d) Mutual Agreement Procedure

## Question on the paragraph 2 of Article 4

- Mr. Koderu has a Permanent Home in Japan. But he constructed new house in UB. Mr. Koderu's family is still in Japan. And Mr. Koderu's properties are still in Japan. Recently he got new business in UB. In the near future, he will stay actually in UB much more rather than Japan.
- In this case, Mr. Koderu can be a resident in Mongolia ?

## Why Both sides Corporation Resident in both countries is occurred ?

- In the case of determination of residence of Corporation, we have 3 principles *such as a) the foundation proper law , b) the head office address, c) **place of effective management**.*
- For instance, country A adopts the head office address principle and country B adopts **the place of effective management principle**.
- In this case, suppose that X corporation has its head office in country A and has **the place of management** in country B.
- ➔X corporation can be a residents in both country A and B.
- In OCED model convention, X corporation is a residents in country B.

## ★★Contention: In the case that Residents in both States are occurred ?

- Country A : Head office residence
- Country B : Place of management
  
- How about in the case of Head office in country B and Place of management in country A ?
- If the corp. is conducting those business **arbitrarily**, the conduct may be considered to be International tax avoidance.

## ★★Contention : Foundation proper law, Head office residence, Place of management

Q1 Which one is the most understandable?

→Foundation proper law & Head office residence

Q2 Most possible taxation one in proportion to the actual condition of the corp. ?

→The place of management principle in which Residence is the place of management.

Q3 Defects of the place of management ?

→The definition is unclear.

Q4 So, How to do?→Double use ?

## ★★Contention : Why Japan does not have the Place of management ?

- Japan has the Head office residence principle.

- ➡ why ?

- The definition of the principle causes a lot of dispute on the definition of the place of management.

## ★★Contention : What is Permanent Home ?

- It is the place where families resides.
- However, we do not have the stipulation in the Japanese law.

## Q “Place of effective management” in OECD model convention

- OECD model convention Art.(3)
- Where by reason of the provisions of paragraph 1 a person other than
- An individual is a resident of both Contracting States, then it shall be
- deemed to be a resident on only of a state in which its place of ffecte

## ★★Contention : Place of management in the Commentary of OECD model convention ?

The difference between 2008 commentary and 2005 commentary?

Provision Article 5 (Permanent Establishment)



## Art.5 Para.1

- Place of business
- Continuation of business for a certain period
- Business is conducted
  
- ★ OECD=UN

## Art.5 Para.2

- Just example
  
- But the conditions of Para.1 (definition)and Para.4(exclusion)should be met
  
- ★OECD=UN

## Art.5 Para.3

- Partnership (partner A & B) ?
- Total term (A plus B) should be considered.
  
- ★ UN model & OECD model  
more than 6 months  
(consultant) service PE is OK  
(OECD recently admits in commentary 42.11)
  
- OECD commentary 42.23  
more than 183 days (can be) PE rule

## Art.5 Para.4

- ① OK but ④ × not PE
  
- Actually decision on preparatory or auxiliary activities is not so easy.
  
- ★ UN model  
(F) clause of OECD model is not stipulated.

## Art.5 Para.5

- Conditions to be dependent PE
- 1. on behalf of enterprise
- 2. authority to conclude contracts
- 3. habitually exercises
  
- UN model
- OECD agent PE plus stock of goods agent

## Art.5 Para.6

- Independent Agent cannot be PE
- But if the agent is related with other special corp., the agent can be PE of the special corp.
  
- UN model stipulates PE of agent of insurance company.

## Case kodera opinion

- Dependent Agent is not scrutinized by referring to the tax treaty.
- Fact finding is not enough.  
Checking the contract not only the contents but also the process of concluding are needed.  
The record of the officials working in the subsidiary, etc should be examined.  
E-mail checking is also needed.
- PE is also treaty's problem, so we have to discuss the provisions.  
The commentary is needed to think over the points at issue.

★As PE problem is related to international tax matters, at least we have to refer to the provisions (including the commentary) and touch upon the interpretation.

## ★★★: No tax without PE. Why ?

- Rea. 1 Even if Japanese corp. is conducting its business in the US, the business without PE in the US of Japanese corp. is determined in the trial stage . So tax office are not going to tax to the Japanese corp. until conducting the business activities by having the physical facilities.
- Rea. If not existed PE, hard to do withholding taxation.
- Rea. Although the Japanese corp. are in the trial stage, there will be no corp. making inroads into the US market if US tax office want to tax to the Japanese corp.
- ➡After all, this rule (“No tax without PE”) is for the easy business activities between the countries.

## ★★Contention: Range of Conditions of Art.5

### ① NO1

- Condition 1 「existence of Fixed place of the business conducting the business」
- Q Resident (a) corp. in country A concluded the lease contract with (b) corp. in country B as to the one room in the (b) corp.'s building in country B. (a) corp. is using the room as an office.  
Is “(b) corp.'s building” PE which (a) corp. has in country B ?

## ★★Contention: Range of Conditions of Art.5

### ① NO2

- Condition 2 “Fixed place of business”
- ➡ “Fixed” means “a certain period”.
- Customarily traif the place continues 6 months or more, the place can be PE
- Q If the business closes in a short time, PE can be realized ?
- For instance, CM film making, Setting up a shop in trade fair
- ➡Even if the continuous term of fixed place of the business is about 2 weeks or 3 weeks, PE might be realized.

## ★★ Determination of PE

- 1 The sales person of (a) corp. in country A visited periodically (b) corp., regular customer, aiming to get an order, and met with the person of (b) corp. in charge of purchase.
- Q The building of (b) corp. can be deemed be PE which (a) corp. has in country B ?
- Q The sales person of (a) corp. can be a dependent agent of (a) in country B ?

## ★★Contention: “a branch” etc. in Art. 5 ② can be PE automatically ?

- No
- ➡Rea. Because it is necessary for PE determination to meet the condition such as “the definition of PE” in Art.5 ① and non “PE exclusion” in Art.5

## *The difference of Art.5 between OECD & UN*

- *UN Model Art.5 broader than OECD Model Art.5 [IBFD]*
- *Policy reasons underlying differences.[IBFD]*

## ★★ **Contention: Conditions of Construction** PE 1

- a) What is “A building site or construction or installation project”

q1 Only building ?

→No. Why ?

q2 How about construction plan of building and control ?

→Please refer to OECD model commentary.

## ★★★Contentions: Conditions of Construction PE 2

- b) If “it last more than 12 months” ?
- Q1 Calculation of 12 months is done in each construction. If so, the periods spent by contractor for other construction not related to the construction are an outside of subject of the 12 months calculation ?
- Q2 Each construction is as one construction from the view point of business or geography?
- Q3 The construction is suspended due to “bad weather, shortage of materials and labor ?

## ★★★ PE or not PE ?

- By fractionalizing contract, making each construction periods less than 12 months, and differentiating the section of a construction project, how is the result ?



## Q Partnership Construction can be PE?

- Japanese corp. A and B established the partnership in country X.
- Employees of corp. A was permanently stationed from January to June.
- Employees of corp. B was permanently stationed from July to February next year.
- In this case, each corp.'s stationing periods were 6 months and 8 months.
- So, as the construction periods of corp. A and corp. B were less than 12 months in each, the partnership construction can not be PE ?
- →PE, OK
- →Rea. Service offering periods are totally 14 months .....

## ★★★Contentions: difference between OECD model and UN model on Construction PE

### • Difference 1

OECD model :more than 12 months

UN model : more than 6 months

### Difference 2

In UN model, supervisory activities in connection with a building site, a construction, assembly or installation project and consultancy services also can be PE.

## *UNITED NATIONS Income and Capital Model Convention Construction PE*

- *UN Art.5 PERMANENT ESTABLISHMENT*
- *(3)(a) a building site, a construction, assembly or installation project or supervisory activities in connection therewith, but only if such site, project or activities last more than six months:*
- *Explicitly includes both assembly projects and supervisory activities*
- *PE may be present after period of 6 months*

## ★★Reference: Characteristics of Construction PE in Japan China tax treaties

- Duration of PE of construction: more than 6 months
- Supervisory activities of construction etc. : more than 6 months
- Consultancy services for construction etc. more than 6 months  
How about exceptions ?

## ★★ Why the construction other than direct construction can be PE ?

- The relationship with International tax avoidance ?
- The original contractor are prone to avoid the PE taxation.
- How ?

## NEW Construction PE in Japan US tax treaty

- Old tax treaty : more than 24 months
- New tax treaty (Art.5 ③) more than 12 months
- Q If so, in the case that the term of 12 months is fractionation by contract ?
- A (OECD commentary5⑱、Technical explanation5③)
- Q Term ? Interruption of construction ?
- A (OECD commentary5⑲、Technical explanation5③)。

## ★★ Required period for Construction PE (OECD & UN)

- OECD model More than 12 months (construction, etc.)
- UN model More than 6 months (assembly or installation project or supervisory activities)
- UN model More than 6 months (Consultancy services in 1year)

## ★★ Required period for Construction PE (Japan treaty)

- Japan-US More 12 months
- Japan-China More than 6 months (Consultancy services in 1year)
- Japan-Korea More than 6 months
- Japan-UAE More than 12 months
- Japan-Soviet More than 12 months
- Japan-Turkey More than 6 months

## ★★ Required period for Construction PE (Mongolian treaty)

- Mongolia-US ----
- Mongolia-Japan ----
- Mongolia-China More than 18 months
- Mongolia-UAE More than 18 months
- Mongolia-Russia More than 24 months
- Mongolia-Turkey More than 24 months

## ★★ Consultancy service can be PE ? 1

- OECD model commentary 42. 23a)

## ★★ Consultancy service can be PE ? 2

- OECD model commentary 42. 23b)

## ★★ Case

- US corp. D are conducting the construction..
- Next month D received an order of big scale construction project in Japan. Therefore D is going to construct for 18 month in Japan.
- In this case, the construction site in Japan is PE of D ?

## ★★Contention : Why service offering can be PE?

- High speed traffic measures have been developing.
- So ? No need to establish branch in overseas.
- So ?
  
- Source of service ?

## ★★Problem 1 (Service PE)

- Japanese Head Office dispatched the employee to overseas subsidiary and offered the service such as engineering to the subsidiary.
- The remuneration was paid to the service offered in overseas from the overseas subsidiary to the Japanese head office.
- How is the taxation in this case ?

## ★★ Problem 2 (Service PE)

- The plural employees made official overseas business trip in turn and offered overseas services under one contract/
- The number of employees making overseas business trip were 3, and the overseas stationing periods in each employee were 100 days.
- How about PE ?  
→ OECD model commentary (42.23a)b)

## ★★ Contention: Tax exemption for Short term staying person and PE presuming

- In the case of calculation of the income attributable to PE, presumption taxation method in such a way that human personnel cost can be deducted in a certain percentage was used. The overseas business trip term was less than 183 days. The all the remuneration was paid in Japanese head office.
- The tax exemption of short term staying person can be applied ?
- NO !
- → Rea. Under the presumption method, as human personnel cost is deducted from PE income, in the conditions of short term exemption method such as ① not exceeding in the aggregate 183days, ② the remuneration is paid by employer who is not a resident of the other state, ③ the remuneration is not borne by a permanent establishment, condition 3 is not met.



## ★★ Contention : why exception provisions of PE is stipulated in the Art.4 ④

- Rea. 1 to make the range of PE narrow as much as possible
- Rea.2 to make the source place taxation restrict by Rea.1
- Rea.3 make the economic exchange much more
- &
- To clarify being irrelevant to PE determination only by existence of physical place of business

## ★★ Contention : Representative office & PE

- Usually as the representative office conducts the information collecting and mainly correspondence work, the conducts fall under the “activity of a preparatory or auxiliary character”. Therefore the representative office is not PE on the condition that the office does not conduct business or trade operation.

## ★★Chinese PE on the Representative office

- In China, the following conducts are recognized as PE. (SAT issued 1996, No165)
- 1 The representative office of PR corp. conducts the contract for PR and agent work.
- 2 The representative office of consulting corp. conducts various kinds of service activities.
- 3 Taxable work & activities in China to customers provided by the representative office.

## *UNITED NATIONS Income and Capital Model Convention Exceptions of PE*

### Art.5 PERMANENT ESTABLISHMENT

(4) Notwithstanding the preceding provisions of this Article, the term “permanent establishment” shall be deemed not to include:

(a) the use of facilities solely for the purpose of storage or display of goods or merchandise belonging to the enterprise.

(b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage or display.

## ★★Contention : Why “Agent” can be PE being different from “Branch” on its character ?

- Both conducts based on the intention by the Head office and conducts the sales activities.
- However as conducts of the dependent agent are limited to the conducts provided by Art.5④ such as “activities of preparatory or auxiliary character, the dependent agent can not be recognized as PE.

## ★★Problem :Dependent Agent 1

- Q1 Art. 5⑤ stipulates the condition “conclude contracts in the name of the enterprise”. To avoid this provision’s effect, the agent uses the name of non-related name such as C corp. How about this conduct ?
- A1 If the said dependent agent has the authority to conclude contracts to make the said enterprise restrain, this dependent agent can be the dependent agent having the authority to conclude contracts and the dependent agent of the enterprise.

## ★★ Problem : Dependent Agent 2

- Q Head office employee X sits just with the employee in charge of the negotiation and join the negotiation meeting. X can be PE ?
- A No. Because it cannot be said that X has the right to have authority to conclude contracts.

## ★★ Contention: Inventory holding agent is only in UN model convention ?

- Please refer to Art.5⑤(b) of UN model convention.

## ★★ Contention : Dependent agent in Japan China tax treaty?

- How about “order securing agent” ?
- This agent is PE or not PE ?

## *UNITED NATIONS Income and Capital Model Convention Habitually exercising authority*

- Art. Permanent Establishment

*(5) ...where a person ...is acting in a Contracting State on behalf of an enterprise of the other Contracting State, that enterprise shall be deemed to have a permanent establishment in the first-mentioned Contracting State...if such a person:*

- (a) has and **habitually exercises** in that State an authority to conclude contracts in the name of the enterprise...:or*
- (b) has no such authority, but habitually maintain in the first-mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise.*

## ★★★ Why independent agent is not PE ?

- The revenue only for the enterprise is PE ?
- But the Calculation is complicated.
- The PE determination to the independent is an obstacle for international exchange.
- The independent agent certainly conducts for enterprise as agent.
- However the independent agent conducts in the name of the independent and by responsibility of independent agent.
- Therefore independent agent has no character of dependency.
- The discussion on BEPS in OECD ?

## ★★★ Conditions : Independent (Broker, Wholesaler, Trading company)

- 1 independent legally or economically.
- Q1 What is “independent” ?
- Q2 “acting on behalf of an enterprise”  
What is “acting” ?

## ★★ Contention : Independent but PE ?

- In the case of actually lack the character of independence
- For example, the agent having the sign at a wholesaler can not legally conduct the agent business with other corp. than the enterprise, etc.
- How about the independent controlled by detailed indication of enterprise ?

## ★★ Contention : Difference between OECD & UN on Agent of Insurance company ?

- Art.5 ⑥ in UN model convention stipulates conditions to recognize the “agent of insurance company” as PE.
- How about OECD model convention ?

### ★★★Case : PE risk (105% corp.)

- Japanese corp. J , 100% subsidiary of US corp. U, is conducting the marketing service on the products exported by U to Japan and getting the service fee from U.
- Service fee are calculated based on the cost of J.
- J's activities are mediation service until conclusion of the contract such as marketing research, providing information to customers, order securing, negotiation, and contact with U as to claim management.
- However J has not authority to conclude sales contract.
- In this case, U will have Japanese corporate taxation on its income derived from business activities in Japan.

### ★★★Why Subsidiary can not be deemed to be PE only because of “Subsidiary”?

- Rea. 1 dividend
- Rea. 2 TP stipulation



## ★★★ Subsidiary can be PE. In what case ?

- Corp. (a), resident of country A has corp. (b) in country B.
- Space and inside of the building of corp.(b) can be freely used by parent corp. (a) .
- In addition, a fixed place for business is set.
- Through the place, (a) conducts its business for (a).
  
- In the case of the mentioned above, space and inside of (b) can be PE of (a) in country B.

## *UNITED NATIONS Income and Capital Model Convention*

- *Art.5 (7) ...However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, and conditions are made or imposed between that enterprise and the agent in their commercial and financial relations which differ from those which would have been made between independent enterprise, he will not be considered an agent of an independent status within the meaning of this paragraph.*
- **NO PE if agent :**
  - 1. Legally independent**
  - 2. Economically independent**
  - 3. Acting in ordinary course of his/her business**

## ★★ Contention: How to deal with Service providing in the same enterprise group ?

- Corp. (a) in country A' resident provides service for business administration to (b) in country B's resident.
- In this case, (a) has PE in country B ?
- Please refer to Art. 5 Commentary 42.
- Corp.(a) is in the building of corp.(c), not corp. (b) in a part of corp.(a)'s business.
- Corp.(a) orders the employee of corp.(a) and provides its service to corp.(b).
- In the corp. (c)'s building, corp.(b) has no free hand. Conducts through corp.(c) 's building are not corp.(b)'s business.
- Therefore corp.(c) building is not PE.

## ★★ Contention : Risk in the case that Parent corp. uses its subsidiary lightheartedly as agent.

- Subsidiary's agent activities is recognized as PE, dependent Agent.
- Although subsidiary conducts as agent, parent corp. does not pay appropriately commission fee.
- In this case, TP taxation can be exercised.

## ★★ Contention : Electronic Commerce Transaction & PE

- Japanese corp. does not set up its branch in the US and rents a certain space in the internet from US provider.
- From Japanese corp.'s website put on this space, the music is sold in the form of download.
- How about PE of Japanese corp. ?
- Website itself is not recognized as PE
- IRS can not impose PE taxation.
- OECD is now discussing in the BEPS in terms of PE decision in the Electronic Commerce.

## *UNITED NATIONS Income and Capital Model Convention*

- *Art.5(6)*
- *Notwithstanding the preceding provision of this Article, an insurance enterprise of a Contracting State shall, except in regard to re-insurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the other Contracting State or insures risks situated therein through an agent of an independent status to whom paragraph 7 applies.*

## Provision Article 6 (Immovable property)

### ★ Purport of OECD model Art. 6

#### Purport of Article 6

The contracting state in which the Immovable Property is situated has taxation right to the real estate.

Q 1 How about the income from the immovable property in the  
\_\_\_\_\_ residence country ? 21条(その他の所得)

Q2 How about the income from the immovable property in the third  
\_\_\_\_\_ county ? 21条(その他の所得)

## ★★ Immovable Property → Source principle of Taxation Why ?

- → Immovable property linked strongly with the Economy and Law in the home country unlike the other assets.
- → For instance country A resident (a) gets the income from immovable property in country B (rent fee, etc.)
- This is not only because of (a)'s effort on business administrations but also because of country B's providing peripheral public order and environment to make the people consider that everyone want to borrow the immovable property.
- → So, even no PE in country B, country B (=source country & home country) has the right to tax.
- → It makes sense that immovable property are easy to grasp the income in source country (= home country) compared to other income.

## ★★ Contention: Ships or Aircraft is Immovable property ?

- In OECD Model convention, income from those is not deemed to be the income from the immovable property.
- Business profit covers the income from immovable property.
- Q How about income from a loan secured on Immovable property
- → "interest income"

## ★★ Contention: How about Lease facilities ?

- Q In the case that Resident (a) corp. in country A leases or rents tangible or intangible assets to (b) corp. in country B
- (q1) If (a) corp. leases and rent by retaining the fixed place conducting the business in country B,
  - ➡ The tangible or intangible assets in country B can be PE ?
- (q2) If (a) corp. leases and rent by not retaining the fixed place conducting the business in country B,
  - ➡ The tangible or intangible assets in country B can be PE ?

## *UNITED NATIONS Income and Capital Model Convention*

- *Art.5(6)*
- *Notwithstanding the preceding provision of this Article, an insurance enterprise of a Contracting State shall, except in regard to re-insurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the collects premiums State or insures risks situated therein thro insures risks ther than an agent of an independent status to whom paragraph 7 applies.*

## Paragraph 2 of Article 6 (Definition of Immovable Property)

- Assets or Rights are Immovable Properties ?
- In order to avoid this problem, the OECD model convention defines the Immovable Property by referring to the law of the Contracting State in which the property is situated.
- But the convention shows the Assets and Rights corresponding to the Immovable Property for uniformization of the definition.
- Ships, boats, aircraft shall not be regarded as immovable property.

## Paragraph 3 of Article 6 (Use form of immovable property)

- Despite of the use form of immovable property, all the income derived from the use of immovable property shall be applied by the taxation principle of Paragraph.

## Paragraph 4 of Article 6 (Immovable property of an enterprise)

- Paragraph 4 clarifies that the country having the immovable property can impose the tax to the income derived from the immovable property of an enterprise.
- On the contrary, the income derived from the immovable property through Permanent Establishment (PE) shall be dealt as the Business income of Article 7.

## Provision Article 7 (Business profits)



## ★★ Contention 1: Details of Major revision on Business profits provision in 2010)

- AOA principle was introduced in 2010 model convention.
- “Authorized OECD Approach” .....AOA
- “In the case that Income calculation attributable to PE, the calculation should be conducted with due regard to function, asset, risk which PE possess.”

## ★★ Contention 2: Comparing 2010 OECD model on business profits with the model prior to it

- Compare Art.7 of 2010 model convention with 2008 model Art.7 and before then
- Art.7① PE attributable income taxation is “in accordance with the provisions of paragraph ②”  
(←Old Art.7 provides for only “the profits attributable PE may be taxed.”)  
Art.7②”ALP + in its dealings with other parts of the enterprise + taking into account the functions performed, assets used, and risks assumed by the enterprise”  
(←Old Art.7 provides for only “PE income attributable PE under ALP”)

### ★★★Contention 3: Comparing 2010 OECD model on business profits with the model prior to it

- The following wording of Old model Art.7② were deleted because “if it were a separate and independent enterprise in the same or similar activities under the same or similar conditions, taking.....in 2010 model Art. 7②

- Deleted wording

1. Expense allocation is conducted in accordance with custom of the PE located country PE.
2. Because of **Mere purchase exemption principle**, PE income does not occurred.

Comment (the reason why 1 & 2

★ 1 is against ALP principle.

2 Even if the trade is corresponding to “mere purchase”, paying remuneration to PE can be PE taxable income.

### ★★★Contention: Art.14 “Independent Personal Services” in 2000model was deleted. So what?

- At present the income was dealt as Business Profits income.

★★ Problem : Taxable Business without PE ?

★★ Contention : Difference between Attributable principle and Entire Income principle in PE?

★★ Contention : UN model is based on  
Attributable principle or Entire income principle  
on PE income?

- In the middle ?
- Attributable principle was not adopted.
- UN model Art.7①(c)
- “other business activities carried on in that other State of the same or similar kind as those effected through that permanent establishment
  
- ★ How about PE attributable income in overseas ?

★★ Contention: Business profits taxation by  
using PE provision or withholding taxation?

- Attributable principle in tax treaty between country A and B
- (a)corp. has PE in country B.
- The tax treaty has a business profits provision.
- Country B can do PE taxation by using Business profits provision.

**Q How about in the case of No PE in country B and no PE attributable income, but in the case that domestic source income is in country B ?**

## ★★ Contention : why ALP principle can be applied to Head office & PE transaction in Art.7②

Corporation Group trades contains Head office & PE trade other than parent corp. & subsidiary transaction.

Both trade carries on business in order to lighten the tax burden.

That is to say, the income is transferred into the overseas subsidiary or branch where tax ratio is not so high or light.

Furthermore, in order to make the financial situation of parent corp. of Head office demonstrate even better, head office and parent corp. has tendency to purchase the product at much more inexpensive price compared to market price, on the contrary, they are prone to sell the products at high price.

This is character of trade arbitrariness.

## ★★ Contention : Arbitrariness of related party trade ?

- Art. 9 explains ?

## ★★★Problem Only income attributable to the PE ?

- How about Loss ?
- Head office can do replacement of loss ?
- From the view point of income reduction of PE, the replacement is appropriate ?

## ★★★Contention How to calculate the market price by ALP in Head office & PE trade?

1 It is appropriate that usually under the same or similar transaction, the same or similar products supplied should be made replacement to market price.

2 However, the price of commodity generally changes in proportion to the sales volume and supply term. So, the following complicated process of PE calculation for calculation of the amount close to market price.

①To find out the trade price with third party

②To find our the sales price with other competitive corp.

③To calculate the average sales profit ratio of PE

From the Revenue gotten from the above case (①~③), appropriate expence can be deducted.

We get nearly market price.

## ★★★Contention Loss in PE ?

- Not only income but also loss is attributable to the PE.
- If the income attributable to the PE can be taxed,  
↓
- It is natural that Loss attributable to the PE can be deducted in the calculation of PE taxable income.
- We have to pay attention to the Head office which has prone to make the loss attributable to the PE calculation in order to make the financial situation even better.

## ★★★Problem : Expense by Head office for PE can be deducted ?

- OK
- OECD model considers PE as Enterprise.  
↓
- So, the expense used by Head office for PE can be deducted in the PE income calculation as if the expense was used by PE.

## ★★★Contention : Non-deductible expense in UN model is as same as OECD model ?

- Basically same. But similar
- In UN model, the kinds of expense not recognized as deductible one are more than OECD model.
- → Advantageous for Tax office in PE home country.
- ↓
- Royalty, Fee, internal interest between Head office & PE cannot be deducted as a expense as well as OECD model. (prevent tax avoidance)
- Furthermore **no** deduction by way of other similar payments like Royalty, Fees shall be allowed.

## ★★★Contention : Example of Non-deductible PE related expense in Art.7③

- Deductible Expense in calculation of PE taxable income is limited to the expense procured by **outside** of the corp. and PE.
- So, the following expense can not be deducted.
  - 1 Internal interest between Head office and PE.
  - 2 Royalty from PE in the case that PE uses the patent right.
  - 3 Fee



## ★★ Problem : Deductible Expense of PE ?

- In the case that Head Office procured the working capital from third party corp. for PE, and paid the interest for the PE, the interest can be deductible in the calculation of PE taxable income ?
- ➔ On the condition of the following, it can be deductible as expense.

### Conditions :

PE (oversea branch) has to pay lastly the amount, corresponding to the interest to third party Head office, to the Head office.

## ★★ Contention : Exception of OECD model 2008 Art.7 ②(ALP)

Para.④: If the allocation method is practical from the view point of **law or customs** in 2008, the such allocation as those is OK.  
However it is needed not to diverge largely from the result of ALP calculation.

### Para.⑤: Mere purchase exemption principle

➔ As exception of ALP, in the case that PE purchases commodities only for Head office, PE itself does not use and process the commodities, expense and revenue derived from a series of activities such as delivery of commodities to head office by PE falls outside of PE taxable income calculation.

That is to say, only mere purchase activities does not occur the PE income.

## ★★ In the case of non-applicable of Mere purchase exemption principle

★ The branch purchasing the commodities for head office should conduct other business than the purchase. If the business of this branch is only for purchase for Head office, this branch can not be PE.

PE.

★ The purchase of commodities by this branch is for Head office. Although the purchase is ordered by Head office, if the order is for other corp. than Head office, this principle can not be applied.

★ The branch does not process the commodities. If processed, this principle can not be applied leading to PE income.

## ★★ Contention : UN model has Mere purchase exemption principle?

- No
- However, in the annotation
- Please refer to Note of Art.7
- UN model is reluctant to admit non-PE even if it is appropriate to mere purchase principle ?
- BEPS is similar to UN model consideration ?

★★★Contention: PE income calculation method can be changed every year ?

★★★Contention: Purport of Art.7⑦ in OECD model 2008 ?

- In Art.⑦, dividend, interest, royalty etc., are principally under invest income (withholding) taxation.
- As to the PE attributable income related to those investment income, those are taxed as business profits.
- Why ?
- →Rea. If investment income is taxed as all the investment income occurred in the Contracting state is attributable to the PE, the income can not be taxed in the case of non-existence of PE.
- That is to say, as to investment income having domestic source, the corp. having PE can be taxed, but the corp. not having PE cannot be taxed. It is the result with in-equity.
- So, as to the corp. not having PE, if it has domestic source investment income, withholding taxation can be conducted.

## ★ Purport of OECD model Art.7

### Purport of Article 7

Article 7 stipulates about the Business Profits imposed by the other Contracting States in the case that a Contracting State carries on business in the other Contracting States.

Article 7 stipulates the crucial principle such as “Attributable Principle” and provides the allocation of taxing rights between the Contracting States.

Article 7 supplements Article 5(PE).

## Paragraph 1 of Article 7

- The 1st principle on the Business income is stipulated in paragraph 1.  
Without PE No (Business)taxation
- The 2nd principle  
Attributable Principle  
The other Contracting States can impose the income only to be attributable to the PE.

## Paragraph 2 of Article 7

- This paragraph 2 stipulates “Arm’s Length Principle” as well as Article 9 (Associated Enterprises).
- The income attributable to the Permanent Establishment shall be the income derived from the transaction with other separate and independent enterprises under the condition and the price in the common market.

☆ That is, the PE income is as well as ALP income! (AOA )

Provision Article 8 (Shipping, inland waterways transport and air transport)

## ★★★Contention: Art.8 & Art.7

- Art.8:Shipping, Inland Waterways Transport and Air Transport Income
- Art.7:Business Profit Income
- Art.8 income is an exception of Art.7 income.
- In spite of PE existence, source rule taxation is exempted.
  
- Why ?
- Payment of tax in a port of call by income calculation in each port of aircraft and ship needs complicated calculation. And in resident countries of aircraft and ship
- Double taxation by conducting worldwide income taxation will be occurred.
- Therefore, in the commentary 1, the taxing right shall be left to the Contracting State in which the place of effective management of the enterprise is situated.

## ★★★Taxing right principle= effective management rule is what's foundation or idea

- If the other Contracting State exempts the international traffic income of Japan by a call at a port of the other contracting State, Japan will exempt the international trading income by a call at a port of Japan.
  
- Reciprocal exemption is the idea.

## Provision Article 9 (Associated enterprises)

### *UNITED NATIONS Income and Capital Model Convention*

[OECD Art. 9 (1) = UN Art. 9 (1)]

The sentence on the **Arm's Length Principle** is same.

[OECD Art. 9(2) =UN Art. 9 (2) ]

The sentence on the **Correlative Adjustment(=Corresponding Adjustment )** is same.

Furthermore in [UN Art. 9(3)]

The provisions of Paragraph 2 shall not apply where judicial, administrative, or other legal proceedings have resulted in a final ruling that by actions giving rise to an adjustment of profits under paragraph 1, one of the enterprises concerned is liable to penalty with respect to fraud, gross negligence or willful default.

## Correlative Adjustment (Para.2 of Art.9)

- = Corresponding Adjustment

Y contracting state charged the tax to the profits to which X contracting state had already charged.

Between the X and Y countries, MAP(Mutual Agreement Procedure) discussion was held in line with the Arm's Length Principle stipulated in the Para.1 of Art.8.

In proportion to the agreement related to ALP of the MAP discussion, Y contracting state can charge the TP tax, and X contracting state has to reduce the income (correlative adjustment).

This correlative adjustment means avoiding the double taxation.

Q This double taxation is economic or juridical ?

## Provision Article 10(Dividends)



## ★★ Problem: If just “Recipient”, what is international tax avoidance ?

- Corp.  $\alpha$  in country B paid directly dividend to corp.  $\gamma$  in country C.
- No tax treaty between country B and country C.
- So, country B impose withholding tax 30%(domestic ratio).
- Corp.  $\gamma$  gets only 70 income after tax.
- ➔ Therefore corp.  $\gamma$  set up Paper corp.  $\beta$  in country B.
- B/ $\alpha$  → A/ $\beta$  → C/ $\gamma$  remittance of dividend
- As B & A, exemption of dividend in tax treaty,
- As A & C, only 10% withholding tax ratio,
- **At last C/ $\gamma$  can get 90 income after tax!!!!**

## ★★ Contention : An agency or nominee as a conduit for another person

- OECD model commentary Art.10②12. 2
- 11②8. 2
- 12 4. 2
- Flow of dividend
- Resident in country B ➔ conduit in country A or not A ➔ Resident in country **not A**
- Q A&B tax treaty can be applied ?

## ★★Contention: Art.10①

- Art.① stipulates that Resident of the other Contracting State in which the dividend is paid from the Contracting State has the right of taxation.
- If so, source country's taxation is not allowed ?
- Please refer to OECD model Commentary Art.10①4

## ★★Contention: In the case that Tax treaty between A&B cannot be applied

- 1. In the case that Resident in third party county (other than A &B) pays the dividend.  
→Tax treaty between A&B can not be applied.
- 2. Dividend which resident in country B pays is effectively connected with PE of (a) corp. in country B (OECD commentary Art.10①8)  
→Business profits provision of tax treaty between A&B can be applied.

## *UNITED NATIONS Income and Capital Model Convention      **Dividends***

- Art.10
- • • dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that state, but if the **beneficial owner** of the dividends is resident of the other Contracting State, the tax so charged shall not exceed.

### Question

- Taxpayer set up PE in the state which give preferential treatment to the dividend income for getting the advantage tax position and transferred the stocks to the PE.
  - This PE does not conduct any business.
  - Para.4 of Article 10 can be applied?
- (Please refer to the No.32 of the Commentary.)



## ★★Case

- ABC corp. in US concluded the loan contract with Japanese corp.X
- The object of borrowing money contract is for PE (China Branch of ABC corp.) of China.
- The interest of the loan is paid by ABC corp.
- But lastly the PE in China is going to bear the interest.

**Q 1 In this case, where is the source country ?**

**Q 2 Which tax treaty with Japan can be applied ?**

## ★★Characteristics of Japanese tax treaties on Royalty

- Most of all the treaties are in line with OECD model.
- But Royalty provision has been in line with UN model.
- Source principle taxation has been approved in Japanese tax treaties except for the recent revision or newly treaties.

## ★★★Contention: Source country of Royalty

- 2 principle such as “Taxation to debtor principle” and “Taxation to place of use principle”
- In Japanese internal tax law, “taxation to place of use principle” is adopted.
- Japanese tax treaties are all ““Taxation to debtor principle”  
(OECD commentary Art.12①5)

## ★★★Case: Japanese Corp. uses the industrial property right provided by UK corp. for the business in country C

- Japan : Taxation to place of use principle
- →Place of the industrial property right is country C. So, Japan has no taxing right.
- Japan-UK tax treaty : Royalty is based on the “Taxation to debtor principle”
- →Payer of Royalty (Debtor) is Japanese Corp. Despite the right is used in anywhere, Japan is the source country of the royalty and Japan has taxing right.

★★ Contention: Which one is better ?  
“Place of use” or “Source country” principle ?

- Specify the Place of use is difficult due to diversification of economic activities.
- Source country principle is easy to decide the source country.
- So, it is better from the point of practical business.

★ Purport of OECD model Art.11 (Interest)

- **Purport**
- As compromising solution, taxing power have been divided into both residence and source countries.
- That is, this convention recognizes the source country to levy the withholding tax under the tax law if the domestic law stipulates the taxation to interest.
- Source country can relinquish the taxing right.

## Para.1 of Article 11 (Residence country Taxation)

A contracting state has a source of interest.

The interest is paid to the resident in the other Contracting State.

The residence country can levy the tax to the interest.

### **Question**

The interest is paid to the non resident in the other Contracting State. Art.11 can be applied?

## *UNITED NATIONS Income and Capital Model Convention Interest*

### • Art.11

• • • interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but the **beneficial owner** of the interest is a resident to the other Contracting State, the tax so charged shall not exceed • • •



## Para.4 of Article 11(Effectively connected with PE)

- Purport (Para.4)
  - Para.4 stipulates that if the beneficial owner has PE in the source country and debt-claims resulting in interest is effectively connected with PE, Article 11 shall not apply.
  - In this case Article 7(Business Income) shall apply.
  - **Commentary No.24** stipulates that "the force of attraction of PE" is not adopted.
- Q Attributable principle ?

## Para.6 of Article 11(Payment over Arm's Length Price)

- **Purport**
- The excess part of the interest shall remain taxable in case that interest paid exceeds the Arm's Length Price.
- That is, Not exceeding 10% clause (=Not more than 10% clause) should not apply to the excess part.

## Provision Article 12 (Royalty)

### ★ Purport of OECD model Art.12

- **Purport**
- This Article stipulates for the taxation of Royalty paid in terms of the license of copyright, patent, trade mark.
- In the OECD Model Tax Convention, the State in which beneficial owner of Royalty resides has the exclusive right to tax.
- Reside: 存する、有する
- However, the United Nations Model Tax Treaty stipulates for both taxation Resident country and source country.
- That is, it shows a conflict between the technology introducing countries and technology exporting countries.

## Allocation of Taxing Rights OECD & UN Model

- OECD Model Art. 12(1)

- UN Model

Art. 12(1) (2),

Art. 23

## Para.1 of Article 12(Residence country Taxation)

- Para.1 of Article 12
- (Principle)
- Royalties arising in a Contracting State and beneficially owned by a resident of the other Contracting States shall be taxable only in that other State.
- ((Only one) Exception)
- In the case that the right of property in respect of which the royalties are paid is effectively connected with PE
- **Question: What is the beneficial owner ?**
  - 代理人や名義人(The holder of a title deed)、Conduit Corp.もだめ。

## Service

- From Commentary 11.2
- Difference between Know-how Contract & Service Contract
- The know-how contract differs from contracts for the provision of services, in which one of the parties undertakes to use the customary skills of his calling to execute work himself for the other party.
- Payments made under the latter contracts(=service contract) generally fall under Article 7(Business Income; PE).

## Computer

- **Commentary No.12** of Article 12 stipulates as is the following;
- Whether payments received as consideration for computer software may be classified as royalties poses difficult problems but is a matter of considerable importance in view of the rapid development of computer technology in recent years and the extent of transfers of such technology across national borders.
- **Q The consideration of computer software is Royalty ?**  
YES.全体管理のオペレーティング・ソフトウェアと数値計算などの特定目的設計のソフトウェアがある。ソフトウェア・プログラム著作物は「プログラム著作物」として著作権法(Copy right law)で保護

## Para.3 of Article 12(Royalty effectively connected with PE)

1. The beneficial owner of the royalty has a PE in a source country.
2. The right or property resulting in royalty is effectively connected with PE.
3. The royalty is not under Article 12.

**Q In this case, what Article should be applied ?**

**7条(事業所得)の条項が適用される。**

**Q Carrying on business of PE is a condition for the application ?**

**コメントリー3項21で「PE実質関連原則」はビジネス実行が必要**

## Provision Article 13 (Capital gains)

## ★★Contention : Alienation of movable property for business of PE Art.13②

- PE country has the first taxing right. Refer to Art.7
- PE enjoys the public service benefit from the country in which PE is located.

The PE country can seek the favor.

## Contention : Alienation of aircraft or ship

- In Art.13③, in spite of the place of occurrence of income, the place of effective management of the enterprise is key.
- But Japanese tax law has no concept of the place of effective management of the enterprise.
- In Japanese treaty, we have the following expression such as “Contracting State in which enterprise conducting international transport business resides has only the taxing right.”

## ★★Contention: Alienation of Real estate formed shares

- In Art.13④, if more than 50% of the value consists of immovable property, the country in which the immovable property is located has the taxing right.
- Japan-US tax treaty  
at least 50% ! not more than 50%

## ★★Difference OECD & UN on capital gains

- Home country criteria same
- As 50% criteria, etc., UN model stipulates “2 countries negotiation”.

## ★★Contention : Alienation of shares which are like business transfer

- OECD & UN does not stipulate this alienation. In Art.22④(OECD) Art.21③(UN), the residence country of transferer has taxing right.
- Japanese tax law stipulates the home country criteria.  
That is, the home country of stock issuing company in stead of stock transferring company.  
So, some Japanese tax treaties adopt home country criteria.

## *Question*

- *Question*

**1) Can you compare Allocation of taxing rights under Tax Treaties on Para.5 of Art.13 in OECD model ?**

**2) Could you explain the difference between Taxing State in OECD model and Taxing State in UN model in terms of each Art. 13 ?**

**(hint : Residence State only ? Source State only ? Or Both ?)**



## Art. 14 (Independent Personnel Service) Deleted WHY ?

- In 1996, OECD tax committee concluded that **PE** used in Art. 7 (Business profits), and **Fixed base** used in Art. 14, furthermore the calculation method were **no difference**.

*(No difference between fixed base and permanent establishment)*

- In addition, h) was added and clarified the “term” business includes the performance of professional services and of other activities of an independent character.
- The Commentary Art. 7 and Art. 5 also clarifies those.

*(Alternative text in OECD Commentary for services without fixed place*

*Deemed PE)*

*(Arts 7 (and 5) applicable to services)*

Provision Article 14 (Deleted)

## ★★ Contention : Why OECD model deleted Art.14 ?

- This Article is substantially as same as Business Profits provision.
- Japan-US treaty has also no “independent personal services”.  
Other Japanese tax treaties have it.
- “Fix base” in Art.14 is as same as PE in Art.5.

## ★★ Contention : Difference UN & OECD on Independent Personal Services

- In principle “No taxation without Fixed Base”

- **Exception**

- Even if no fixed base, it is possible to conduct the business to some extent in the other country.

Resident (Independent Personal services) in country A stays more than 183 days in country B, country B has the taxing right.

- Lawyer, Dentist, engineers, and others are included.

## Provision Article 15 (Income from employment)

### ★★ Contention : Why 183 days rule ?

- In principle, the official who become overseas employee for leaving Japan one year over became Japanese non-resident from the next day of departure from Japan and is taxed by overseas tax office.
- But if the overseas working is only for 1 month, overseas taxation will be done and furthermore, Japan will also tax.
- Double taxation will be occurred.
- Naturally foreign tax credit is OK, but complicated !
- Taxation to even short-term overseas employment leads to obstruction of personnel exchange.
- Therefor as to overseas employee 183 days or less, overseas taxation is exempted.

## Provision Article 16(Directors' fees)

### ★ Purport of OECD model Art.16

- Purport
- Directors' fees may be taxed in the other Contracting State in which a company is a resident.
- Because it might be sometimes be difficult to ascertain where the services are performed.(Commentary No.1)
- **Question**
- **Other similar payments include "STOCK OPTION"?**
- (Hint : Commentary No.1.1 )はい。
- **The relationship between this Article and Art.13(Capital gain) ?**
- **権利行使時は16条、譲渡時13条**

## Provision Article 17(Entertainers and sportspersons)

### ★ Purport of OECD model Art.17

- **Purport**

- Because of only one time or very short term international activities of Artistes and Sportsmen, or because of complicated international tax avoidance scheme, the practical difficulties have occurred.
- That's why artistes and sportsmen may be taxed in the other Contracting State in which **their personal activities as such are performed.** (Commentary No.1)

## Provision Article 18(pension)

### ★ Purport of OECD model Art.18

- Purport
- Pensions related to private employment are taxable only in the State of residence of the recipient.(Commentary No.1)
- **Question**
- **Taxation by the State of residence of the recipient ? Why ?**
- 受領者の居住地国は、受領者の全世界所得や扶養親族 (dependent relative) というような、受領者の担税力を把握できるから。

## Provision Article 19 (Government service)

### Art. 19 ( Government Services)

No1

- **Taxation principle**
- Art.19 stipulates para.1(a)
- **Exclusive taxation right by dispatching State (a Contracting State)** to the salaries, wages, and other similar remuneration paid by a Contracting State, etc.as services rendered to that State, etc.
- Art.19 stipulates para.2(a)
- **Exclusive taxation right by dispatching State (a Contracting State)** to the pensions paid by, or out of funds created by a Contracting State, etc. related to services rendered to that State, etc.

## Provision Article 20 (Students)

### ★ Purport of OECD model Art.20

- Commentary No.1
- The State where the student or business apprentice is staying shall exempt from tax in terms of all such payments received from sources outside the State as their maintenance, education, or training.
- Commentary No.2
- **Why the word “immediately” was inserted in the Model Convention ?**
- It is to make clear that the Article does not cover a person who has once been a resident of a Contracting State but has subsequently moved his residence to **a third State** before visiting the other Contracting State.
- Commentary No.3
- This Article covers the remuneration for services rendered by the recipient ? NO
- **If not, what Article covers ? 15条**
- **In the case of independent services ? 7条**



## Provision Article 21 (Other income)

★★★Contention: Where is taxation place for “Other Income” ?

- Wherever the income is occurred, it is taxed in the residence of beneficiary of the income.
- However if PE can be recognized, it is taxed in the residence country of PE.

## Question

- Question

- If the payer of income as interest is as same resident in a Contracting State as the recipient, and if the income is effectively connected with PE in the other Contracting State, Art. 21 can be applied ?

YES

- Because we have a problem of withholding taxation problem in a Contracting State.

配当、利子についての源泉地国課税とPE課税の二重課税

Provision Article **22** (Capital)

## Art. 22 (Taxation of Capital)

- This Article deals only **taxes on capital**.
- Art. 22 defines the taxes in capital.
  
- In terms of Immovable property, Para.1 stipulates.
- In terms of movable property as a part of PE, Para.2 stipulates.
- In terms of capital represented by ships and aircraft operated in international traffic, etc. the Contracting State in which the place of effective management of enterprise is situated.
- All other elements of capital of a resident of a Contracting State shall be taxable only in that state

Provision Article 23A (Exemption method)  
23B (Credit method)

## Juridical Double Taxation & Economic Double Taxation

- Question
- What's the difference ?
- How many States are involved in each taxation ?(One State or two States ?)法的にも経済的にも2ヶ国以上
- The object of taxation such as income or capital is same or not ? (Same income or not ?)法的、経済的にも同一所得、
- The taxpayer is same or not? (the same person or two different persons ?)法的二重課税は同一、経済的二重課税は異なる二社

## Exemption Method & Credit Method

- In Japan, we adopt Credit Method in the our treaties.
- Because we adopt Credit Method in our domestic law.
- Many Treaty partners also adopt the Credit Method.
- Even Treaty Partners adopting Exemption Method in the tax treaty adopt the Credit Method pertaining to only Investment income.
- We have tax sparing system in some tax treaties. (Tax sparing system considers reduced tax amount as the amount of tax payment and admits the foreign tax credit.)

## ★★Contention: Formula on Foreign Tax Credit System (Credit method)

**Japanese X corp: 1000 income in Japan, country P/Branch of X 1000 income. Country P taxed the Branch at 25% (tax 250) Japanese Effective tax ratio is 38%.**

In the case of credit method

Domestic source income 1000, Foreign Source Income 1000

World wide income 2000 × Japanese corp. effective tax ratio 38% =  
Japanese Corp tax 760

Japanese corp. tax 760 — tax payment in country P 250 = Tax payment in Japan 510

**After all, country P 250, Japan 510 = 760 Tax payment of X corp.**

If X earn 2000 in Japan, 2000 with overseas, tax amount is same.

★ Avoidance of double taxation is OK.

## ★★Contention: Demerit of Credit Method

- Complicated calculation on Foreign tax credit limitation
- So, in the case of small amount of foreign tax and difficulties on acquisition of documents needed for final return, loss inclusion method is adopted expediently.
- Exemption method is not adopted in Japan in principle.  
(Only Foreign Dividend Exemption system is adopted.)

**Foreign Tax Credit Limitation = Corporate Tax × Foreign Source Income / Worldwide income**

**760 × 1000 / 2000 = 340**

## ★★Contention : Exemption Method

In the front slide,

In the case of the Exemption Method

Domestic source income 1 000、 Foreign source income 1 000

Domestic source income 1 000 × Japanese Effective Corporate Tax rate  
38% = Japanese Corporate tax amount 380

After all, 250 to country P, 380 to Japan, totally 630 Xcorp tax burden

## ★★Contention : Loss Inclusion of Foreign Tax Method

• *In Japan this method is also OK.*

• In the front slide,、

• Domestic source income & Foreign Source income in each, 1 000、 total 2 000(world wide income)

• (World wide income 2000 — Tax payment to country P 250) × Japanese Effective Tax Ratio 38% = Corporate tax amount 665

• After all, 250 to Country P, 665 to Japan, total 915(Tax payment of X corp. in Japan)

• ★250 is included in the Loss calculation, so, 250 × 38% = 95 exclusion of double taxation OK, However remaining 155(=250 — 95) is still double taxation.

## OECD & *UN model* on Tax Sparing Credit

- Commentary on OECD model Art. 23 B (credit method)
- Para. 1 C **tax sparing** No.78.1
- ...The Committee expressed the view, however, that tax sparing should be considered **only in regard to States the economic level of which is considerably below that of OECD member states. ....**
  
- UN model commentary on Tax sparing does not stipulate the restriction as above mentioned in the OECD commentary.  
(C Tax Sparing in Art.23 B in UN model commentary )

## Provision Article 24 (Non-discrimination)

## Para.1 of Art. 24 (Non Discrimination on Nationality)

- Commentary No.5

- This paragraph establishes the principle that for the purpose of taxation discrimination on the grounds of **nationality** is forbidden.

- Question

1.What is “Nationals” ? Corporation is also included ?..... YES

2.The resident of third country is applied by this Para.?両締約国の国民なら、第3国居住者でもOK

3.Resident taxpayer and Non resident taxpayer are in the circumstance ? 同様の状況にない。よって、差別の禁止はない。

## Provision Article 25 (MAP)



## MAP process

First Step : Admissible Objection by taxpayer to the Competent Authority

Second Step : Mutual Agreement Procedure between Competent Authorities

### **Question**

**The Competent Authority has Duty to reach mutual agreement ?**

Provision Article 26 (EOI)

## Para.1 of Art.26 (EOI 3 different ways plus $\alpha$ )

### Commentary 9

1. EOI on request information related to audit (最重要)
2. EOI automatically interest, etc.
3. EOI spontaneously information for the other State

### Commentary 9-1

4. **Simultaneous examination** audit between two or more States
5. **Tax examination abroad** audit in the other State by dispatched auditor
6. **Industry-wide EOI** EOI in terms of specified whole economic sector such as oil industry, etc.

## Provision Article 27 (Assistance in the collection of taxes)

## Para.8 of Art. 27 (Limitations to the obligations imposed on the requested State)

- 1. to carry out administrative measures at variance with laws, etc. of requested State.
- 2. to carry out measures contrary to Public policy
- 3. to provide assistance in the case that requesting State has not pursued all reasonable measures
- 4. to provided assistance in the case that requested State's burden and requesting State's profit are not balanced.

## Art.28, Art.29,Art.30,Art.31

- Art.28 Diplomat
- Art.29 Territorial Extension
- Art.30 Entry into Force
- Art.31 Termination