

**MONGOLIA**

**GENERAL DEPARTMENT  
OF TAXATION**

**THE PROJECT FOR THE ENHANCING  
TAX COLLECTION OPERATION AND  
INTERNATIONAL TAX ISSUES OF  
MONGOLIAN TAX ADMINISTRATION**

**PROJECT COMPLETION REPROT  
YEAR 2**

**OCTOBER 2016**

**JAPAN INTERNATIONAL COOPERATION AGENCY (JICA)**

**INSTITUTE FOR FINANCIAL AFFAIRS, INC.**

**Pacsa Co., Ltd**

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## **ANNEX**

- PDM
- Work Flowchart
- JICA Expert Dispatch Track Record
- Record of Trainings
- JCC MM
- List of Equipment
- Training Materials

## **Separate Volumes**

- OECD Model Tax Convention on Income and on Capital (Mongolian Version)
- International Tax Glossary
- Reference Case Studies

## **Abbreviations**

AOA	Authorized OECD Approach
APA	Advanced Pricing Arrangement
BEPS	Base Erosion & Profit Shifting
CFC	Controlled Foreign Company
C/P	Counterpart
CP	Cost plus method
CUP	Comparable Uncontrolled Price Method
EOI	Exchange of Information
GDT	General Department of Taxation
GOM	The Government of Mongolia
GOJ	The Government of Japan
IMF	International Monetary Fund
JCC	Joint Coordination Committee
JICA	Japan International Cooperation Agency
MAP	Mutual Agreement Procedure
MNT	Mongolian Tugrik
MTA	Mongolia Tax Administration
NTA	National Tax Agency of Japan
OECD	Organization for Economic Cooperation and Development
OJT	On-the-Job Training
PDCA	Plan-Do-Check-Action
PDM	Project Design Matrix
PE	Permanent Establishment
PO	Plan of Operation
PS	Profit Split Method
R/D	Record of Discussion
RP	Resale Price Method
TNMM	Transactional Net Margin Method
TP	Transfer Pricing
TPM	Transfer Pricing Method
TRIPS	Total Revenue Information Processing System
WB	The World Bank

## **1. Project Outline**

### **1.1 Background of the Project**

The government of Mongolia has been moving from a socialist planned economy to a market economy, and as part of that process, it has been receiving technical support from JICA to help modernize its tax collection system. Since 1998, JICA has provided cooperation to the Mongolian tax authority (the General Department of Taxation) in the following five stages in order to strengthen Mongolia's tax collection capacity and increase the tax collections that form the foundations for public policy.

①The study on the support for the economic transition and development in Mongolia(Tax collection enhancement phase I )

August 1998 to September 1999

A comprehensive survey was undertaken to improve collections capacity and methods for examinations related to the cash transactions that were the mainstay at the time were transferred.

②The study on the support for the economic transition and development in Mongolia(Tax collection enhancement phase II )

June2000 to August 2001

Advice was offered on the tax system revision draft by the GDT, including audit methods for taxation and collection, and a technology transfer was provided for the procedures for estimating income in order to carry out taxation of businesses that do not use ledgers.

③Tax collection enhancement phase II (Development of taxpayer information system)

November 2001 to March 2003

A third-party information system was developed to improve the situation where taxpayer information was retained by the individual tax officer, making tax examinations inefficient. Specifically, information from organizations such as Customs was matched with taxpayer information in the GDT and utilized in inspections.

④Establishment of tax education system in Mongolia

December 2003 to July 2005

A training system for officials that included a curriculum and teaching materials to ensure the Mongolian tax authorities would be able to carry out perpetual and stable tax collection without assistance was developed. At the same time, the third-party information system was followed up and support provided for taxpayer services and publicity.

⑤Enhancement of tax administration project in Mongolia

January 2006 to September 2008

In personnel training and education, the short-term action plan formulated in the "Establishment of tax education system in Mongolia" was implemented and its progress managed, and a collection of examination case studies for collection work as well as a manual

for examinations on a per-industry basis were created. For collections, a notification system was trialed as a way to deal with delinquency. The third-party information system was further improved, and along with digitizing VAT declaration forms, VAT invoice processing was able to be systematized. Tax-related information from other organizations was also expanded. In addition, in terms of taxpayer services, the establishment of a taxpayers service center, designed to help make things easier for taxpayers, was encouraged. The establishment of a call center in Ulaanbaatar was supported and contributions were also made to starting telephone consultations.

As of 2011, tax collections accounted for between 82% and 84% of revenue, or 36% to 38% of GDP. This is a high tax collection rate among countries with similar income levels. Through this project, JICA has made major contributions to ensuring tax collection in Mongolia, but as the economy has developed considerably in recent years, so too have new issues arisen.

Due to the development of the copper and gold deposits in Oyu Tolgoi and the coal deposits in Tavantolgoi, a large number of foreign-based companies have moved into Mongolia. In addition, small to medium investment from nearby countries is increasing. In line with this, tax avoidance schemes and transfer price taxation issues arose that take advantage of loopholes in the law.

However, the systems related to international taxation are insufficiently developed, and there are few officials who can deal with these issues. In particular, tax treaties have previously been dealt with by the Ministry of Finance, so there were few officials in the MTA (Mongolian Tax Administration), and training people who will be able to deal with international taxation issues in terms of examinations and negotiations was an urgent issue.

In addition, while tax collections continue to increase, delinquency is also increasing, and accounts for 10% of collections. A range of delinquency processing is carried out to solve this issues, and the establishment of a Tax Debt Call Center was also studied.

This is the background against which the Mongolian government requested technical assistance from Japan.

## **1.2 Overall Goal**

Fair and appropriate tax administration is enforced in Mongolia.

Objectively Verifiable Indicators

- (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

### **1.3 Project Purpose**

The capacity of Mongolian Tax Administration (MTA) on international taxation and tax collection are strengthened

Objectively Verifiable Indicators

- (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

### **1.4 Output**

1. The fundamental knowledge and skills necessary for international taxation are acquired.

Objectively Verifiable Indicators

- (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 CP 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 subsidiary companies, anti-tax heaven (CFC) rules, etc.
- Basic of Transfer Pricing (TP)
- Advance Pricing Arrangement (APA)
- Mutual Agreement Procedure (MAP)
- Exchange of Information (EOI)

## 2. The foundation of international taxation is solidified

### Objectively Verifiable Indicators

- (1) The current situation of information management analyzed in a report
- (2) The review of “OECD Model Tax Convention on Income and 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 3 of candidates trainers of the Training Center completed the trainer training on international taxation
- (7) Carry out follow-up training and advice for issues on examination on international taxation

## 3. Rules and procedures of MTA on tax collection are improved.

### Objectively Verifiable Indicators

- (1) Result of 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 principles, 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



### 1.5 Target Region

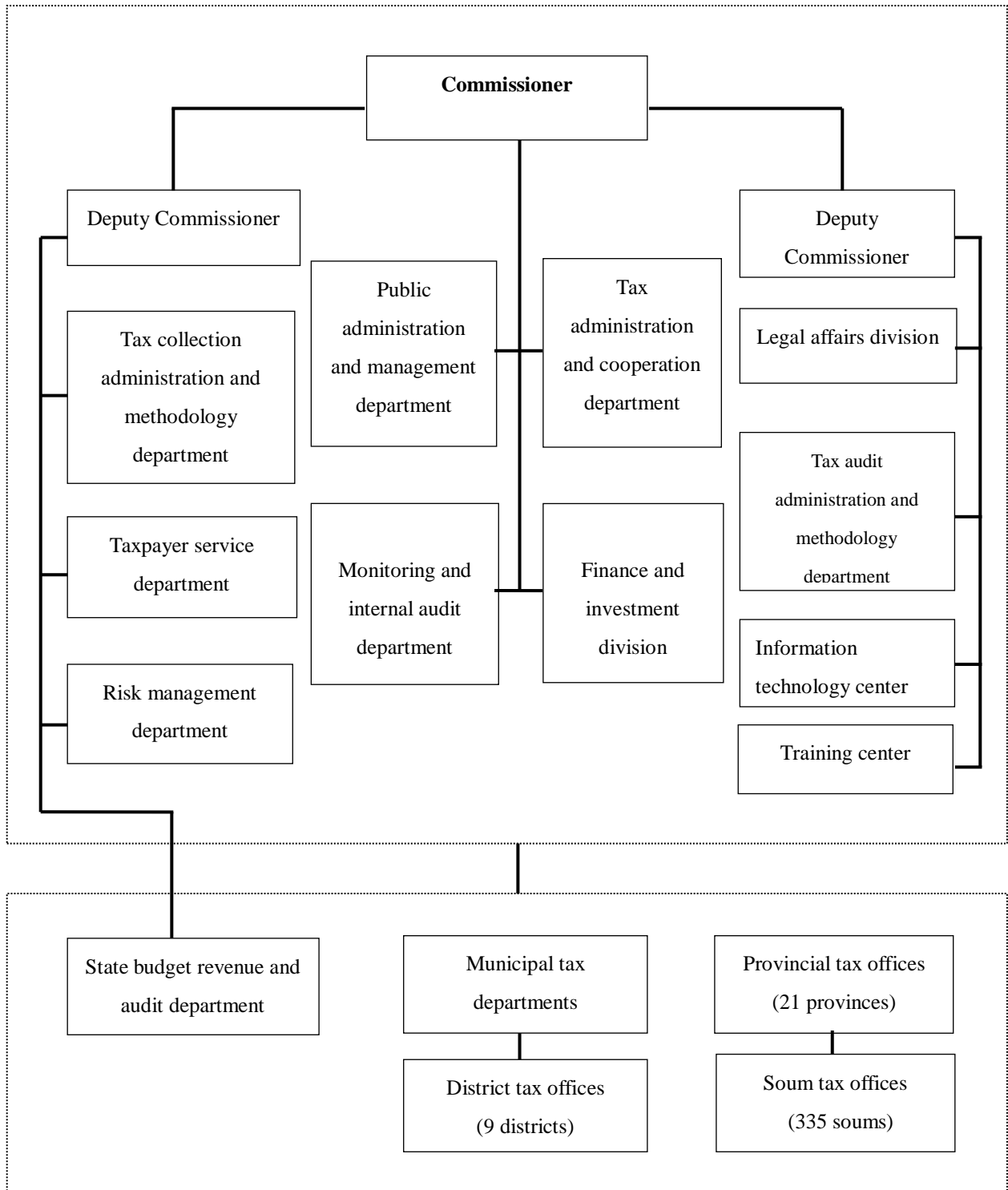
This project covers Ulaanbaatar (General Department of Taxation), as well as 21 provinces and the Ulaanbaatar capital city province (Tax Offices) of Mongolia.



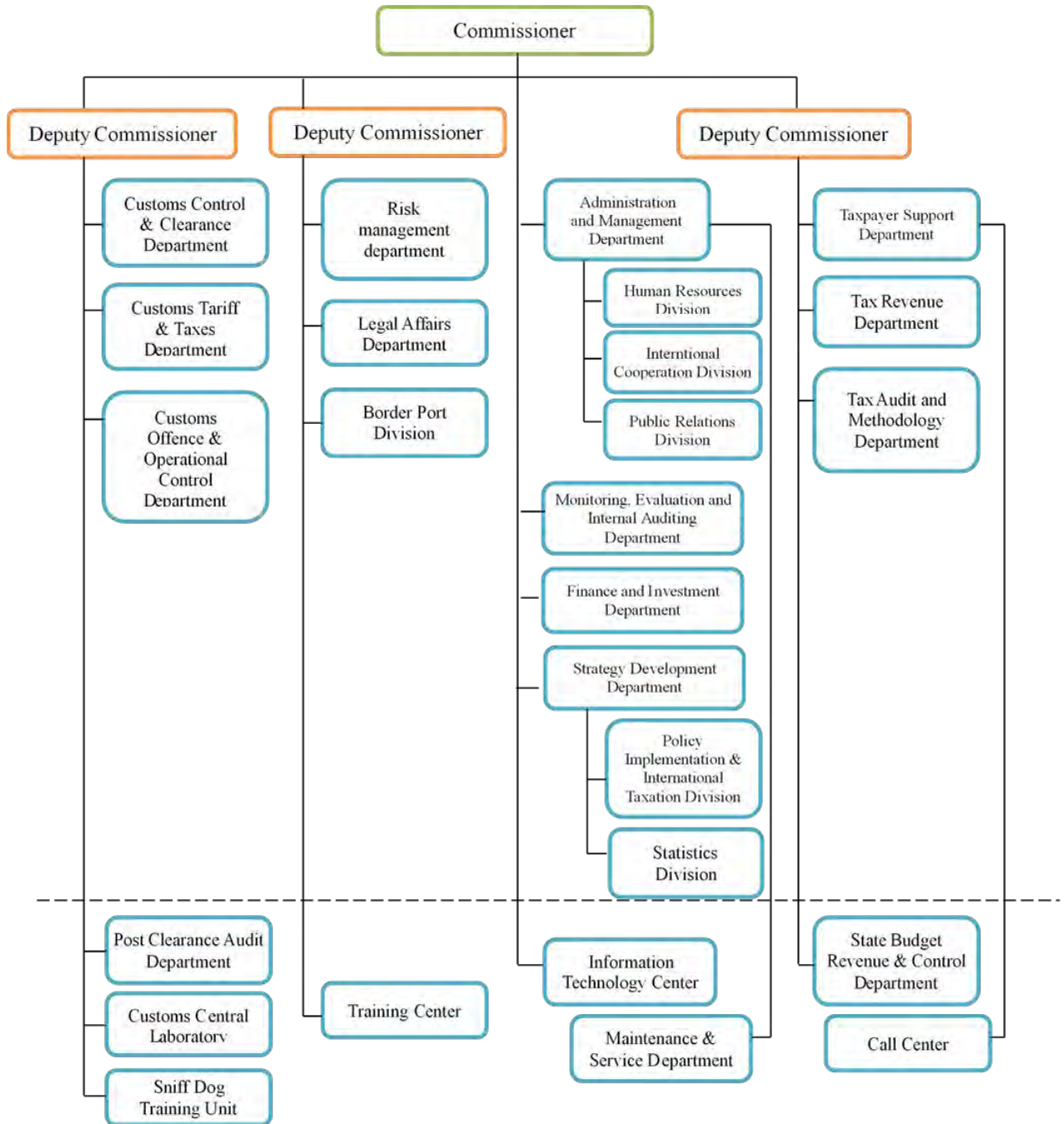
### 1.6 Related Ministries and Organizations

The organizational merger with Customs started from January 2016. However, it split in July 2016. The following is an organizational chart of before and after the merger. Organizational chart after the merger.

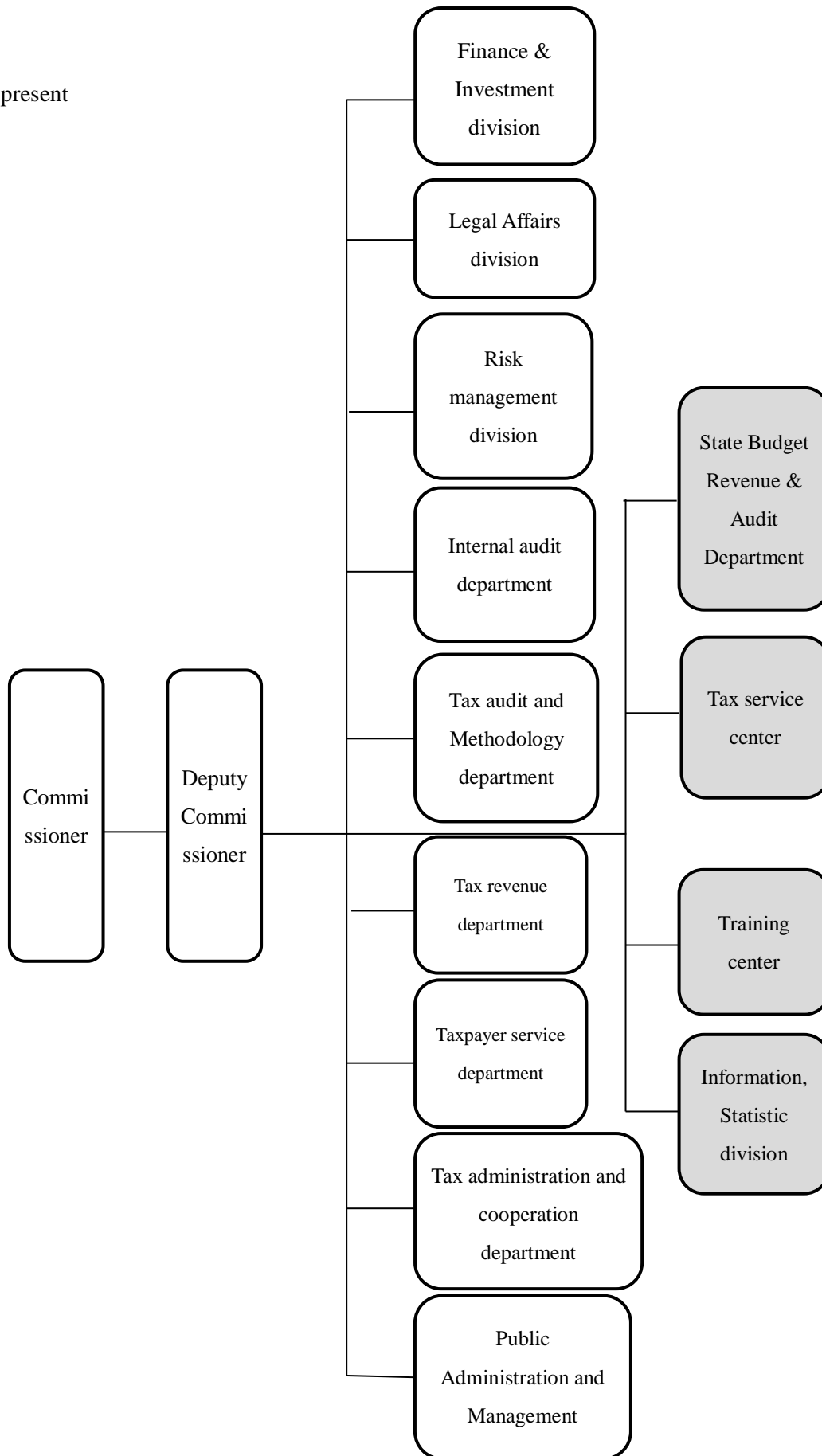
General Department of Taxation \* Before merger



After meger



At present



## **2. Activity Details**

### **Year 1 (December 2013 to July 2014)**

\*The numbers below correspond to those on the flowchart.

#### **1 Work Plan (First Year Draft) Creation and Discussions**

##### **1-1 Collection and Sorting of Related Materials and Information**

Existing materials were sorted and any necessary materials collected as far as possible. Translation of the OECD Model Tax Convention was started.

##### **1-2 Creation of Operating Plan and Work Plan Draft**

An operating plan incorporating the following was created and a work plan draft was submitted. These were arranged and listed so as to be able to be utilized in the Work Plan draft.

- (1) Project outline
- (2) Project implementation guidelines
  - Basic policy for project implementation
  - Specific methods for project implementation
  - Project implementation structure (including JCC system)
  - Work flowchart
  - Schedule of experts
- (3) Other
  - Logistical assistance
  - Other required items

##### **1-3 Creation of Work Plan Draft (First Year Draft)**

Using the operating plan, the project's basic policies, methods, Operation Process Plan, etc. was created and collated as the Work Plan draft.

The listed items draft is as per 1-2.

##### **1-4 Work Plan Draft (First Year) Discussions**

The Work Plan Draft was explained to GDT. Discussions were held with related persons, and the overall image of the project shared. In addition, the movement of other donors were checked.

##### **1-5 Creating an Implementation Structure**

In parallel with the above, the JCC and the project implementation structure was created. Mr. Badral who is the director of Tax Administration and Cooperation Department was appointed to the head of the counterpart team.

## **2 Status Survey of International Taxation in Mongolia**

### **2-1 Collect Information on Laws, Regulations and Rules in International Taxation of Mongolia**

- (1) Focusing on specific international taxation issues
- (2) Understanding the overall characteristics of taxation laws

The tasks were implemented in the first year, and this information was reflected in 2-3 below.

### **2-2 Understanding the Current Situation of Tax Treaties and Advice for Improvement**

Based on an understanding of the current situation, issues with tax treaties (the general summary edition) were compiled in February 2016, and points for improvements were presented at the same time as the points with issues. In addition, in intermediate training for international taxation, materials were prepared to compare Mongolia's tax treaties with the OECD Model Convention and tax treaties from other countries, and core staff taught the areas where their country's system were lacking.

### **2-3 Assembling a Current Status Report Related to International Taxation in Mongolia**

Based on the above, a report was assembled with training in Japan in mind. In addition, this was used as reference by the Japanese National Tax Agency personnel who were scheduled to visit Mongolia for EOI training in spring of the first year.

## **3 Needs Survey**

Hearings were held with 25 tax officials. Also hearings were held with the head of training center and instructors regarding the present situation and issues of international taxation training.

## **4 Work Plan (First Year) Agreement**

The Work Plan (First Year) as amended through discussions and previous activities was used to clarify the project implementation methods and the baseline. Discussions and exchanges of opinions were held with GDT. And the first JCC (Mar 4, 2014) was held to reach agreement on the Work Plan.

## **5 Country Focus Training for International Taxation**

### **5-1 Preparations for Country Focus Training for International Taxation (introduction)**

Training was carried out from February 17 to 18, 2014, with Japan's NTA hosting. The following tasks were carried out in the project.

- (1) Discussions were held between GDT and experts to select those who could become core

staffs.

Those who have not been selected were listed as candidates for participating in basic training in Mongolia. Following the decision, they were encouraged to prepare for training in Japan through, for example, a Country Report. Experts passed on requests and demands based on previous survey results to NTA. Also informed NTA regarding the level of trainees for the training contents. The project team supported the translation of materials of NTA.

## **5-2 Implementation of Country Focus Training for International Taxation**

Training in Japan was carried out by the National Tax College from February 17 to 18, 2014. The itinerary, program, and list of trainees is shown in the training track record.

## **6 Preparation and Implementation of Mongolia-based Training for International Taxation**

Local training in Mongolia in international taxation was carried out in accordance with the following points.

### **6-1 Creating the Curriculum and Preparing Teaching Materials**

#### **6-2 Implementation of Local Training**

In addition to training for officials, training was also carried out for management personnel at the request of the GDT. The program, and list of trainees is shown in the training track record.

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

- Period: April 9th to 11th, 2014
- Eligible trainees: 27 core GDT officials (as well as additional observer participation)
- Purpose: To teach management officials the basic knowledge of international taxation in order to promote future internationalization responses for the organization overall.

##### (2) Basic training in international taxation for candidates for dispatch for intermediate

International Taxation country focused training

- Period: June 24th to July 4th, 2014
- Eligible trainees: 21 candidates for dispatch for intermediate Japan-based training next year (as well as additional observer participation) \*except officials who took part in 1<sup>st</sup> country focused training
- Purpose: To teach candidates for dispatch for intermediate training to be held in Japan 2015 (As the participants in intermediate Japan-based training 2015 will be selected from the participants in this training and the Japan-based training in 2014, aligning the knowledge levels with the participants in February 2014 Japan-based training will be given focus.)

(3) The seminars on information exchange

- Period: May 19 to 21, 2015
- Eligible trainees: core officials, executives

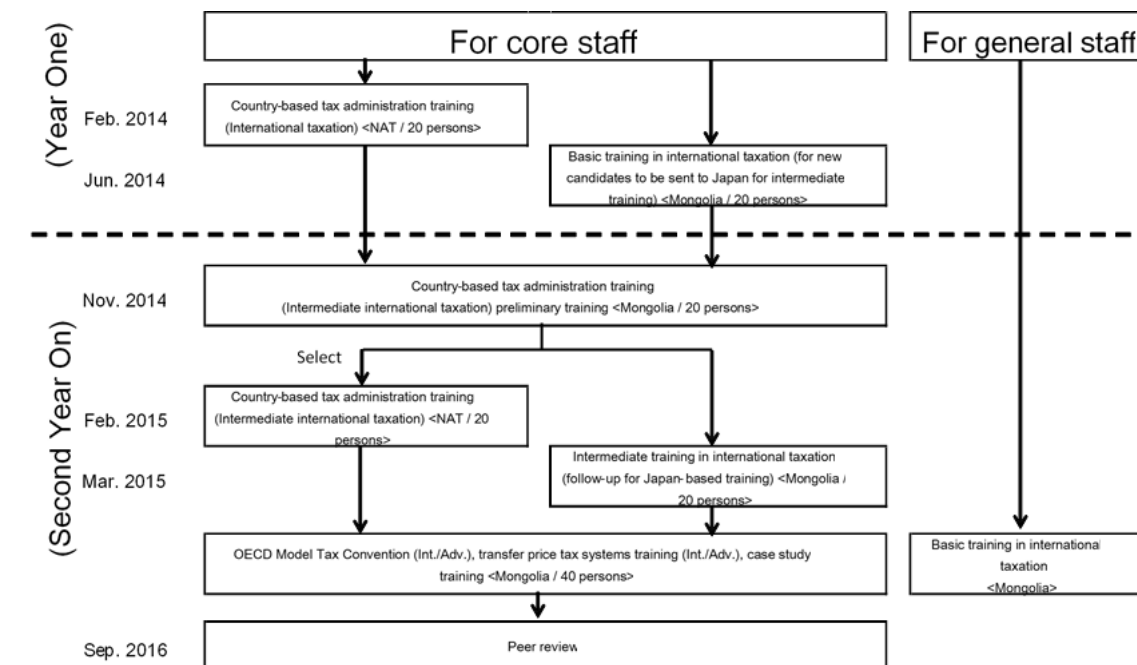
The Seminar were held by Mr. Kosugi of NTA and National Tax College Teaching Official Nakajima. The project provided support through the collection of information, the translation of lecture materials, running the seminars, and assessing the training.

### 6-3 Local Training Assessment and Improving Contents

Student evaluations through end-of-training testing and evaluations of the training by the students were analyzed to improve the contents.

### 7 Creation of a Human Resources Development Plan

The following plan was created and used as the basis for implementation.



### 8 Analysis of the Current Status for Exchange of Information

The current status with regard to exchange of information in ministries related to taxable corporations was understood and analyzed with international taxation in mind. Experts then prepared a report on the issues in the tax treaties. This was provided as reference materials for the seminar on exchanges of information by Japan's NTA. Tax treaties between Mongolia and other countries were also included in the training materials.



## **9 Mongolian Translation of the OECD Model Tax Convention on Income and on Capital (OECD Model Tax Convention)**

This was translated and the following processes carried out with regard to reviews.

- Translation and review of the 2010 edition of the OECD Model Tax Convention

Due to the massive volume of the translation, two translators were asked to do the work. Revisions and re-translations were done for those sections where the translations did not match or where the meaning of the original sentences were not properly conveyed.

Project experts were consulted for sentences or sections which were hard to understand. In addition, CPs and cooperating GDT heads provided advice on jargon which is not easily translated into Mongolian.

- Translation of the 2014 edition of the OECD Model Tax Convention

Based on a request from the GDT at the JCC, a translation of the revised portions of the 2014 OECD Model Tax Convention was completed between February and May, 2015. The translation of the unrevised portions was also reviewed and corrected.

### **Tax Collection Field**

#### **10 Survey of Current State of Delinquency Processing in the Collections.**

##### **10-1 Implementation of Current Status Survey**

(1) The collection status was checked separately for each tax item, including corporate tax, income tax, added value tax taxation, and the unspecified income tax law. The current status of property survey methods and the existence of manuals was also checked.

(2) Following that, the major tax offices were visited. Hearings were held with tax officials on problems in actual practice (unable to carry out as there is no law, or execution is a problem).

Items to confirm were listed below.

- (i) Checking legal regulations
- (ii) Checking the status for delinquency processing flow based on regulations
- (iii) Analyzing the status of delinquency processing done in actual work and discovering problems
- (iv) Understanding problems in delinquency processing, including legal cases
- (v) Trends in the establishment of Call Centers

##### **10-2 Report Compilation**

A paper collecting the above problem areas was compiled as a report and used as the reference for Country focus Training.

## **11 Country Focus Training for Tax Collection**

### **11-1 Preparations for the Training for the Tax Collection**

- (1) Selection of candidates was done in consultation with GDT and the policy determined.
- (2) The project team passed on requests and demands based on previous survey results and informed the level of trainees for the training contents to NTA.

### **11-2 Implementation of for Country Focus Training for Tax Collection**

The training was carried out by the instructors of the National Tax College between April 6th and 12th, 2014. The translation of teaching materials to implement this was supported by this project. The curriculum and list of trainees are included in the training track record.

## **12 Advice for Improving Collections Work**

### **12-1 Advice for Improving Collections Work**

Advice for improving collections work was given based on the results of the surveys (other than Tax Debt Call Center). Advice was provided separately on the executive aspects which are possible under current laws and on the legal aspects where revisions to the laws are required. The key items are listed below. Advice was given throughout the project period.

#### **(Working process)**

1. Revisions and improvements for the methods to deliver payment notifications.
2. Creation and provision of a Collections Work Manual.
3. Provision of office administration documents.
4. Understanding the disposition of delinquency situation for one year.

#### **(Legal system)**

1. Creation of a Mongolian language edition of the key provisions in the Japanese National Tax Collection Act.
2. Explanations of the theoretical basis for taxation priority rights and the specific contents of the Japanese taxation priority rights system.
3. Carrying out a survey on the necessity of bringing in a new legal system (such as the status of coordination between the courts and court judgment enforcement agencies, the status of tax waivers under the 2008 Amnesty Law, and so on).

### **12-2 Advice Prior to Establishing Tax Debt Call Center**

- To use the Japanese Call Center as a reference, a lecture on it was given to related persons.
- The details of the Office of Tax Collections Call Center (using diagrams).

- The performance was explained. For example, “According to the Center, during the one year from July 2010 to June 2011, some 530,000 (68.4%) of the some 770,000 people covered by notifications were settled, and some 90,000 (11.1%) of them made payment pledges.”
- Goal of bringing in a Call Center
- Start period for operation
- Operating system
- Content to implement

The regulations required for establishment was studied with the counterparts based on the above information.

### **12-3 Procuring Equipment and Materials (1)**

Carried out in the second year.

### **13 Creating a Work Completion Report (First Year)**

When the first year contract was completed, a Work Completion Report was compiled and submitted. The Second Year Work Plan (Proposal) was included as the Next Term Activities Plan.

## **Second Year (October 2015 to October 2016)**

### **14 Work Plan (Second Year Draft) Creation and Discussions**

#### **14-1 Creation of Operating Plan**

An operating plan that includes the following was created and arranged so as to be able to be utilized in the Work Plan draft.

- (1) Project outline
- (2) Project implementation guidelines
  - Basic policy for project implementation
  - Specific methods for project implementation
  - Project implementation system (including JCC system)
  - PDM (review of indices and setting the baseline)
  - Work flowchart
  - Schedule of experts
- (3) Other
  - Logistical assistance
  - Other required items

#### **14-2 Creation of Work Plan draft (Second Year Draft)**

Using the operating plan in 14-1, the basic policies, methods, work schedule, etc. for the project was created and compiled as the Work Plan.

#### **14-3 Work Plan Draft (Second Year) Discussions and Agreement**

The Work Plan Draft was explained to GDT. Discussions was held with stakeholders, and also for issues and responses until the end of the project. The Second JCC was then held on October 22, 2014, at which agreement was reached.

#### **15 Creation of a Human Resources Development Plan**

The plan created in the first year continued to be implemented.

#### **16 Human Resources Development for Core staffs**

##### **16-1 Implementation of the Second Local Training in Mongolia**

The second Mongolia-based training will be carried out based on the results of 6-3.

- Period: Nov 17 to 28, 2011
- Eligible trainees: 40 core officials
- Purpose: To select 20 participants of 2<sup>nd</sup> country focused training.

The program, and list of trainees is shown in the training track record.

##### **16-2 Preparation of Country Focus Training of Intermediate International Taxation**

Based on the result of 16-1, 20 participants from these 40 were selected as members of country focused training in Japan (2015). Interviews with candidates were conducted to confirm motivation and aptitude. Final decision was done by GDT.

##### **16-3 Implementation of Country Focus Training of Intermediate International Taxation**

The project supported to organize the country focused training on intermediate international taxation on February 16-27, 2015. The proposal about the level of the tax officials, and training content was suggested to NTA by project experts. The translation of the lectures materials was carried out. The program, and list of trainees is shown in the training track record.

##### **16-4 Implementation of Training Related to Intermediate International Taxation**

Follow-up training was provided for around 40 core officials in April 2015. Presentations based on country focused training by those who were trained in Japan as well as presentations from participating staff were held, allowing participants to share levels of understanding and

awareness of the issues. In addition, local seminars were held from June 21 to 23, 2016, by officials from Japan's NTA (Professor Mizukami and Lecturer Suzuki from the National Tax College) on overseas transaction investigation methods, transfer price taxation systems, and mutual agreement. The program, and list of trainees is shown in the training track record.

#### **16-5. Support for GDT International Taxation Regulations, Developing International Taxation Work**

Details are mentioned in 5.1 "International Taxation Administration, International Taxation Examination, International Taxation, Tax Treaties".

Guidance was given to compare Mongolia's transfer price taxation system, and the laws and regulations, with Japan's international taxation laws, and enhance special tax laws such as transfer price taxation systems as well as regulations for effectively operating this transfer price taxation system. As a result, the GDT incorporated regulations related to transfer pricing in the Corporate Tax Law. In other words, a preliminary check (APA: Advance Pricing Agreement) was created for Article 4 of the Corporate Tax Law and a TPM (Transfer Pricing Method) and other comparable uncontrolled price methods were created as Article 12.

In addition, as a foundation for this corporate tax bill, regulations for the enforcement of the transfer price taxation system are being created. A manual for transfer price taxation examinations is also being created.

#### **17 Human Resources Development for Other Tax Officials**

Training for other officials, on the other hand, was done in international taxation at the GDT Training Center.

##### **17-1 Creation and Revision of the Training Curriculum for General Tax Officials and Introduction of the PDCA Cycle to the Training Center**

The themes for the international taxation course at the existing Training Center are (1) tax conventions (including the commentary to the OECD Model Convention), (2) local subsidiary taxation, and (3) permanent establishment (PE) taxation. It has been confirmed that 8 hours are spent on international taxation training. Training texts from international organizations and other bodies are used.

Towards the third international taxation training for general staff, the training center instructors increased their roles, with the final goal of having it all be internal. By the third training session, the teaching materials and curriculum was completed.

##### **17-2 Implementation of Trainer Training Related to International Taxation**

Training Center instructors are included among core officials. At the same time as taking part in each program of this project (training, peer review), they were asked to serve as instructors for actual basic training in international taxation at the Training Center in light of the purpose for human resources training. Their lectures were checked by experts, and this method improved both the knowledge and teaching skills of these core officials.

### **17-3 Implementation of Training for General Tax Officials**

The following three were conducted as international taxation training courses for general staff

First Aug 17 to 21, 2015

Second Mar 7 to 11, 2016

Third Sep19 to 23, 2016

The program, and list of trainees is shown in the training track record.

### **18 Creation of Work Progress Reports (Second Year)**

Four progress reports were prepared in the second year.

### **19. Midterm Evaluation**

Midterm evaluation was not conducted by the consultation with JICA.

### **20. Work Engagement Status Monitor for Trainees of Country Focus Training**

Monitoring of intermediate trainee core staff was done through training. The international taxation work track record (including work which could become international taxation work) was summarized in training. The problems faced by each person were made sharable by using the actual cases they were handling through follow-up training.

### **21. Peer Review Preparation**

Peer review was done by September 2016. Building on the monitoring of work engagement status, trainees presented their own case studies and trends, sharing them with other participants. Cases were collected in consideration of colleagues and other notable cases from other people were shared to raise up the overall level.

The facilitators proceeded with the following in mind.

Trainees shall:

- (1) Be able to understand comprehensively the various basic topics of international taxation  
Not just random, unconnected knowledge, but a comprehensive, systematic, explanation of a given issue in international taxation.
- (2) Be able to explain the extent to which that explanation is related to Mongolian tax laws.
- (3) Be able to provide positive advice for international taxation organizations in Mongolia.

- (1) is the efforts made for a comprehensive understanding of international standard rules.
- (2) is a reconsideration of Mongolian laws.
- (3) is a revision of international taxation audits of one's own country.

These were borne in mind during the process.

**Tax Collection**

**22. Support the Operation of Tax Debt Call Center and Advice for Improvements**

**22-1. Procuring Equipment and Materials**

In addition to creating specifications and bids for procurement, the work procedures required by the JICA guidelines were implemented.

No		Quantity
1,2	Server	2
3	Router	2
4	PC	8
5,6	PBX (with headset)	1(8)
7	Switch	1
8	Printer	1
9	Copy Machine	1
10,11,12	Desk, Chair	9 each
13	Cabinet	1
14	Closet	2
15	Hanger	1

**22-2 Advice for Tax Debt Call Center Operation**

Advice was provided on the following after understanding the operating situation of the Tax Debt Call Center. The details will be shown later.

- (1) On those targeted for notifications.
- (2) On the status of the work they were engaged in.
- (3) On processing returned cases.
- (4) On support for telephony work.

### **22-3 Tax Debt Call Center Assessments**

Materials for measuring the effects of the Tax Debt Call Center were created, and materials (such as “OP work status table,” “No. of Received/Sent Calls (by tax type)/Contact Rate/No. of Payment Pledges/Investigation into Tax Amount for Same”) for measuring the effects on the work of the Tax Debt Call Center were created.

### **22-4 Tax Debt Call Center Improvements**

The Center started from limited off-line implementation in March 2016, after which it gradually expanded its region. However, as little time has passed since it started, we are still at the stage of observing the operational trends and summarizing the results.

A local Mongolia seminar was held from May 19 to 21, 2015, by NTA officials as an activity in the collections field other than those listed above.

### **23. Support for the Tax Collection Operation**

Described in 12-1 “Advice for Improving Collections Work”.

### **24 Terminal Evaluation**

The project team cooperated with terminal evaluation team. And compiled all technical transfer results, achievement levels, work track records, and indices. Following this, the JCC meeting (Mar 17, 2016) was held.

### **25 Preparation of the Completion Report**

A work completion report was completed by the end of the second year. The work completion report contains the following items.

- (1) Project outline (background / chronology / goals)
- (2) Content of activities (work flowchart)
- (3) Issues, schemes, lessons (work implementation methods, operating systems) for project implementation operation
- (4) Project goal achievement level (interim review, completion evaluation outline, etc.)
- (5) Advice for international taxation and the collections field in future tax administration in Mongolia.



#### Attached Materials

PDM (review of indices and baseline setting)  
Work flowchart  
Expert dispatch track record  
Training track record  
Provided equipment / portable equipment track record (including the handover list)  
Joint coordinating committee minutes  
Training materials

### **26 Project Completion Seminar**

A seminar on the project results was held to spread awareness. GDT, the Ministry of Finance, and other organizations were invited to attend.

In terms of content, the activities and track record of the project to date were presented by the GDT, and experts provided advice on the directions future initiatives should take for international taxation and the collections field.

## **3. Project Output**

The terminal evaluation was carried out in March 2016. The outputs below have been extracted from the terminal evaluation materials.

The evaluation team evaluated the Output 1 was achieved, Output 2 was largely achieved, Output 3 was achieved, and the project goals were largely achieved.

### **Project Purpose**

The capacity of Mongolian Tax Administration (MTA) on international taxation and tax collection are strengthened

#### Objectively Verifiable Indicators

(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

International taxation: A new International Taxation Division was established in January 2016, and five officials with at least five years of experience and basic knowledge of international taxation were assigned.

Collections: Twenty officials were assigned to the Collections Department and thirty to the Call Center (ten of whom were assigned to the Tax Debt Call Center).

(2-1) The EOI Unit becomes established and operational

Establishment of an independent EOI Unit was stopped. An EOI Section was created in the Strategy Development Department (Currently, Tax Administration and Cooperation Department) , and started work in January 2016.

(2-2) Agreements with ministries and agencies are executed for collecting fundamental information necessary for EOI

Exchange of information work had been carried from before. As of February 2016, agreements had been made with 27 related organizations within the country, and information exchange work carried on as before following the opening of the EOI Section based on those agreements.

(2-3) The list of countries and number of inquiries sent to the EOI Unit

The facility was established and relocated in January 2016, and received four EOI requests from Russia.

(3) Number of international taxation cases found during regular examination

International tax examinations are carried out, but there is little accumulated data on the numbers of cases related to international tax examinations, so it was not possible to evaluate any increasing or decreasing trends. As a result of interviews, it was confirmed that the inspectors deal with international taxation cases (PE or TP) on a daily basis, and are using the knowledge they learned during training.

(4-1) Number of cases dealt at the Tax Debt Call Center

The Tax Debt Call Center opened on March 17, 2016. It is presently expanding its target area in stages (detailed data shown later). Full operation will start later, and it is expected to contribute to improving taxation work efficiency.

(4-2) Efficiency of tax collection of local tax offices improved

The results of GDT monitoring show that while the collection efficiency has been increasing since 2012, the cause-and-effect relationship between this project and the increase is insufficient.

Output 1. The fundamental knowledge and skills necessary for international taxation are acquired.

Objectively Verifiable Indicators

(1) The report of the review on laws, regulations and rules of international taxation

The review of laws and regulations ended around May 2014, and the report has been created. Advice was given on the creation of case studies that include cases related to transfer pricing in Japan and the Manual on Transfer Pricing being prepared by the GDT.

(2) By making review report, procedures and practices on international tax treaties are clarified

A comparative study was made of the tax treaties with other countries to which Mongolia is signatory to and the OECD Model Tax Convention, and issues Mongolia faces with international taxation analyzed. The analysis results were included in a PowerPoint (PPT) slide, and shared with stakeholders. They were utilized as materials for international taxation training from the second year.

(3) Making report about identified needs of CP on capacity development for international taxation

A questionnaire on international taxation was carried out for 25 tax officials in the first year of the project. The results were reported at the First JCC (March 2014).

(4) 20 qualified C/P completed the introductory training in Japan on international taxation.

Twenty-one officials who met the selection criteria provided by the NTA participated in the February 2014 workshop in Japan.

(5) At least 40 qualified trainees participated the basic training on international taxation.

During the period we offered cooperation, training in international taxation (not including in Japan) was carried out more than eight times, and at least 40 people (cumulative total: 421) underwent basic training in international taxation.

## Output 2. The foundation of international taxation is solidified

### Objectively Verifiable Indicators

(1) The current situation of information management analyzed in a report

This survey was carried out and a report compiled, which was then used as reference information for the EOI (Exchange of Information) seminar by the NTA in May 2014.

(2) The review of “OECD Model Tax Convention on Income and Capital” into Mongolian language completed

The translation of the 2010 version was completed in summer 2014, while the translation of the 2014 revised version was completed in May 2015.

(3) Human resource development plan for international taxation approved

A comprehensive human resources training plan was formulated for both core staff and general staff in the first year. Approval was given at the Second JCC in October 2014.

(4) Review and revision of the curriculum for international taxation completed

The existing curriculum was reviewed in the first year. A curriculum proposal for the first international taxation training for general staff was completed. This was utilized in training for general staff for international taxation. The final version was created for the third international taxation training for general staff in September 2016.

(5) Teaching materials and textbooks for international taxation prepared

Twenty to thirty types of materials were created as teaching materials for the workshops in Japan and in Mongolia.

(6) At least 3 of candidates trainers of the Training Center completed the trainer training on international taxation

Three Training Center instructors were trained from among the core staff who took the workshop in Japan and the intermediate-level international taxation training in Mongolia. They served as instructors for the general staff.

(7) Carry out follow-up training and advice for issues on examination on international taxation

Follow-up training was provided for core staff in April 2015 and February 2016.

Output 3. Rules and procedures of MTA on tax collection are improved.

Objectively Verifiable Indicators

(1) Result of review and analysis of the current collection methods, and other institutional actions

An analysis of the current state and issues related to Mongolia's collection methods and system was carried out along with the workshop in Japan (tax collection) in April 2014. The results were announced at the workshop in Japan. Issues were discovered regarding the self-enforcement authority and tax priority authority of the tax offices. The results were shared with related parties at the Second JCC.

(2) Necessary institutional actions for recovery of taxes in arrears defined

We confirmed that standardization and labor-saving for office tasks and improving collection efficiency were issues that need addressing in the future. We advised the revision of the system

for implementing work.

(3) Basic principles, rules and procedures for establishment of the proposed Tax Debt Call Center defined in a manual

We advised regulations by November 2014 for the Tax Debt Call Center.

(4) The proposed Tax Debt Call Center is inaugurated

The Tax Debt Call Center was established as an external department of the Taxpayer Services Department in January 2016, and opened in March 2016.

## **4. Project Issues and Lessons**

### **4.1. Issues with Project Implementation**

(1) Unification of the Customs Agency and the General Department of Taxation

Merger of government departments led to the merger of the Customs Agency and the GDT. This merger was designed to improve areas like work efficiency through sharing information, but in December 2015 and January 2016, there were some minor work issues due to organization of work and changes to HR and locations due to this merger. Later, following the results of the July 2016 General Election, the Customs Agency and the GDT were separated.

In addition, the opening of the Tax Debt Call Center was delayed by about a year from the original plan. The reason was due to the delay in determining the assignment of the personnel due to the reduction in the number of public servants and technical coordination with the Debt Management System. In addition, the reorganization due to the merger of both agencies and the system department being made independent were also reasons for the delayed opening.

(2) Future of tax law reforms

A draft that incorporates advice from this project on areas like the introduction of self-enforcement authority was submitted, and scheduled for deliberation by the State Great Khural. However, the effects of the General Election meant that it was not deliberated on before this project ended.

### **4.2. Lessons from Project Implementation**

(1) Project activities over the long term

JICA's tax administration support in Mongolia has been carried out for more than 15 years now (with some gaps). Both the GDT and JICA are aware of how the project has been carried out, and this continuity is a factor behind making operation smoother and increasing the effects of the project. The fact that the local staff have remained at their work for the long term and high quality translation and interpretation in the specialized field of tax administration are also

vital factors for carrying out technology transfer effectively. These have been developed over the long term, so we feel that in terms of technology transfer in the administration field, ongoing support will improve the effects of human resources training.

## **5. Issues and Recommendation for the International Taxation and Collection Fields**

### **5.1 International Taxation Administration, International Taxation Examination, International Taxation, Tax Treaties**

#### **5.1.1 The International Taxation Administration System**

##### **(1) Activities and Output by JICA Experts for Mongolia's International Taxation Administration System,**

1) Through training in international taxation by the project, the GDT has become aware of the importance of international taxation, and has newly established a Policy Implementation and International Taxation Section in the Strategy Development Department.

2) In order to carry out EOI tasks effectively, we advised the GDT to establish an EOI unit in its organization. As a result, the EOI Section was established in the Strategy Development Department in January 2016, and a person in charge of EOI was assigned there. This person in charge of EOI is extremely competent, and is actively carrying out EOI tasks.

3) Moreover, when we provided guidance to exchange opinions about the work procedures with the officials in charge of other departments such as Tax Audit and Methodology Department, the Risk Management Department, or the Statistical Section of the Strategy Development Department in order to make the work of this EOI official efficient, the result was that talks were held as appropriate in the relevant departments and information was indeed being shared.

4) When guidance was given to the EOI official to share awareness of EOI with the directors of tax offices, etc., the result was the letters designed to ensure awareness of EOI among directors were sent to these directors, and the EOI official visited tax offices in Ulaanbaatar to provide explanations of EOI to the directors, and they were made aware of the information exchange system.

5) There has been a continuous series of information exchange. There were 3 with Russia, 1 with Hungary, 1 with Ukraine in 2014, and 3 with Russia, 1 with China, and 1 with Malaysia in 2015. Following the establishment of the EOI Section discussed above, there were 4 information exchanges with Russia. Efforts are continuing with regard to information exchange.

##### **(2) Current State, Issues, and Recommendation for the International Taxation Administration System in Mongolia**

## **Current State**

Under the new organization The GDT Tax Administration and Cooperation Department manages information exchange tasks, mutual agreement procedures, formulates international taxation systems, and other matters related to international tax administration in general. In addition, the GDT Tax Audit and Methodology Department directs and audits the overall work of the GDT in relation to examinations. The department responsible for actual international taxation examinations is the State Budget Revenue & Audit Department. The major tax offices also carry out international taxation examinations.

## **Issues**

In the work of the GDT Strategy Development Department, greater enhancement of international taxation was being attempted through the establishment of the Policy Implementation and International Taxation Section in January 2016. However, international taxation work is not clearly demarcated, other than for EOI and information exchange. There are no sections responsible for mutual agreement procedures, preparing notifications regarding laws and regulations for international taxation, or for establishing treaties. Preparing notifications regarding laws and regulations for international taxation and establishing treaties are tasks related to legislation, so would normally be under the jurisdiction of the Ministry of Finance, but there are only a handful of people responsible for international taxation in the Ministry, and for the time being, both international taxation theory and administration will have to be done by the GDT in close cooperation with the Ministry.

Moreover, as there are no specialists in international taxation examinations in the Tax Administration and Cooperation Department, it would be better to assign veterans in international taxation examinations to the department staff to assist with the normal work of the Tax Administration and Cooperation Department as described above. The reason is to make their understanding of international taxation theory more three-dimensional through the systems and knowledge of international taxation examinations. In regard to this point, the GDT has already assigned top examination officials to the department.

However, the GDT Tax Audit and Methodology Department has no section responsible for international taxation examinations like the international examination administrators in the examinations Section of the NTA in Japan, so it cannot carry out international taxation examinations flexibly. In addition, there are no sections responsible different taxation types, such as corporate tax. The international tax examinations of State Budget Revenue & Audit Department is completed by the State Budget Revenue & Audit Department, so their examination result reports are not submitted to the Tax Administration and Cooperation Department. There are no individual sections for final audits in the GDT for the international taxation done by tax offices (in the NTA in Japan, final audits are done by individual tax type

sections, such as for corporate tax, etc.).

In addition, there are no organizations like the General Affairs Section in Japan's NTA in the GDT, and there is no general contact point with the Ministry of Finance. Therefore, general opinions such as requests for revisions to the tax systems of the GDT, which is a tax enforcement authority, do not reach the Ministry of Finance.

Finally, there is no legal hearings section specialized in international taxation in the GDT. Even though there is a Legal Affairs Department, the lack of one specialized in international affairs is a problem. In Japan, international taxation examination is largely done by the Regional Taxation Bureaus, so legal hearings are done on a case-by-case basis by that Bureau for individual examination cases.

For example, international taxation examination done by the Examinations Department of a Regional Taxation Bureau is checked thoroughly by the legal hearings section in the department from the perspective of whether international taxation laws really do apply.

The examination results are sometimes negative. The person in charge of legal hearings in the Corporate Tax Section of the Regional Taxation Bureau checks this if it is a tax office examination. This is often double checked by the International Examination Administrator Section of the NTA's Examinations Division or the Corporate Tax Division of the NTA. In Japan, the more important and the more tax money is involved in a case, the more carefully the legal checks are carried out.

### **Recommendation**

#### 1) Enhancement of the GDT Tax Administration and Cooperation Department Organization

To enhance the personnel of the GDT Tax Administration and Cooperation Department, the Department needs, in addition to the EOI Section, a Mutual Agreement Procedures Section, an International Taxation Law Section, and a Treaty Establishment Section. These sections would normally need to be staffed with multiple people (because the work needs to be done through discussions among at least two people in a given section). However, for the time being, international tasks should be done by assigning the five officials currently in the Division to be chiefs of any of the sections listed above.

#### 2) Enhancement of the GDT Tax Audit and Methodology Department

An international examinations administrator should be installed in the Tax Audit and Methodology Department. This leader should promptly formulate a design for some sort of international taxation examination system within the Tax Audit and Methodology Department, including solving the above issues. In addition, in future, sections should probably be created for each tax type in order to increase specialization. If there are separate sections for corporate tax, income tax, VAT and so on, then the organizational efficiency of the GDT overall will be improved. In addition, if we consider going to OECD-style tax laws, then it would be difficult



for individual officials to master all the various laws.

3) Assignment of supplementary staff for EOI (Tax Audit and Methodology Department)

To assist with the work of EOI officials in the Tax Administration and Cooperation Department, supplementary EOI officials under the jurisdiction of the Tax Audit and Methodology Department international examinations administrator should be assigned. As all the information for international taxation examinations carried out by the GDT will be collected by the Tax Audit and Methodology Department international examinations administrator, then in order to allow materials on information exchange with foreign countries to be requested speedily to the Tax Administration and Cooperation Department, the Tax Audit and Methodology Department should assign officials to assist with EOI work.

4) Creation of a General Affairs Division or assignment of staff in charge of general affairs (Tax Administration and Cooperation Department)

A General Affairs Division should be set up or staff in charge of general affairs should be assigned within the Tax Administration and Cooperation Department in order to share appropriate information with the Ministry of Finance. It is expected that cases related to international taxation will increase following the taxation system reforms discussed earlier. In general, the Tax Administration and Cooperation Department General Affairs Division should communicate closely with the Ministry of Finance on a daily basis and keep in contact with other ministries and agencies in the country, which will allow it to contribute greatly to efficient international taxation administration by the GDT.

5) Assignment of an official in charge of legal hearings

An official in charge of legal hearings for international taxation examinations should be assigned under the jurisdiction of the Tax Audit and Methodology Department international examinations administrator. This official will conduct legal hearings regarding the laws and treaties for international taxation examination cases handled by the State Budget Revenue & Audit Department or tax offices.

### **5.1.2 International Taxation Examinations**

#### **(1) Activities and Output by JICA Experts for International Taxation Examinations in Mongolia**

Training has been carried out for international taxation examinations to 40 GDT officials. The project experts provided instruction in examination cases and judicial precedents from Japan regarding transfer price taxation and PE (permanent establishment) taxation. As a result, GDT officials learned the importance of the strict attitudes required for examinations based on international standards such as laws or the OECD Model Convention. In addition, officials other than those currently engaged in international taxation examinations also gained an increased

awareness of international taxation.

In addition, an official in charge of international taxation examinations was assigned in the Tax Administration and Cooperation Department, creating a positive collaboration with the officials in charge of legal hearings and legislation for international taxation. This has allowed experiences gained through examinations to be utilized in international taxation law bills or drafting tax treaties. Moreover, a positive bi-directional effect was generated in the form of increased awareness of international taxation examinations based on laws and treaties.

Additionally, as the first result of the training in cases and judicial precedents from Japan regarding international taxation examinations methods, the JICA experts team edited a collection of international taxation case studies, which was provided to the GDT. This book is being used quite a lot by GDT officials in international taxation training and other areas. The second result is that an international taxation examinations manual is being created for international taxation examinations by GDT officials using as references the opinions of the JICA expert's team.

## **(2) Current State, Issues, and Recommendation for International Taxation Examinations in Mongolia**

### **Current State**

International taxation examinations are mainly done by the State Budget Revenue & Audit Department. However, tax offices also face issues in international taxation such as transfer price taxation and PE. In addition, even if these issues are not proper international taxation issues, there are also issues such as foreign transaction examinations related to tax havens.

International taxation contracts which require study based on civil law are present in international transactions.

### **Issues**

- 1) For international taxation issues, basically, whether tax examinations such as corporate tax related to foreign transactions will go smoothly or not is the necessary prerequisite. Therefore, in Japan's corporate tax examinations, understanding the flow of capital both to and from foreign countries is an important skill. For that reason, Japan's national tax examiners actually visit banks in addition to sending document queries to banks to check the state of deposits by taxpayers within that bank, carrying out thorough bank examinations. Sending document queries to banks regarding taxpayer deposits is done, but is not sufficient on its own.
- 2) There needs to be a unified organization of contents and conclusions for international taxation examinations carried out by the State Budget Revenue & Audit Department and tax offices.
- 3) The industrial structure of Mongolia is characterized by resource mining, but there are no

specialized per-industry international taxation examinations manuals.

4) As studies of international taxation contracts are not conducted from civil law either, the precision of international transaction analysis is not high. For example, the regulations in Void Transactions, Article 56 of the Mongolian Civil Code, are not studied to determine the factitiousness of international transactions. A study of this Article 56 of the Civil Code will form a foundation for solving cases of international tax evasion in future.

### **Recommendation**

- 1) Create a proper bank examination system where examiners actually go to the banks and examine taxpayer deposits, etc. within the bank.
- 2) Uniformly organize the international taxation examinations cases in the State Budget Revenue & Audit Department and tax offices and utilize them in international taxation examinations.
- 3) Create a per-industry international taxation examinations manual.
- 4) Article 56 of the Mongolia Civil Code should also be studied to deal with future international tax avoidance cases.

## **5.1.3 International Taxation Systems**

### **(1) Activities and Output by JICA Experts for Mongolia's International Taxation System**

Guidance was given to compare Mongolia's transfer price taxation system, and the laws and regulations, with Japan's international taxation laws, and enhance special tax laws such as transfer price taxation systems as well as regulations for effectively operating this transfer price taxation system. As a result, the GDT incorporated regulations related to transfer pricing in the Corporate Tax Law. In other words, a preliminary check (APA: Advance Pricing Agreement) was created for Article 4 of the Corporate Tax Law and a TPM (Transfer Pricing Method) and other comparable uncontrolled price methods were created as Article 12. These will be debated in the Great Khural at a later date.

In addition, as a foundation for this corporate tax bill, regulations for the enforcement of the transfer price taxation system are being created. A manual for transfer price taxation examinations is also being created.

### **(2) Current State, Issues, and Recommendation for Mongolia's International Taxation System**

#### **Current State and Issues**

- 1) If transfer price taxation is applied, this will result, economically, in double taxation. To prevent this double taxation, tax treaties normally include a regulation on correlative adjustment (this is, for example, when another country applies transfer price taxation to a company

connected with your country, and if an agreement is reached through mutual discussion based on the tax treaty that this is appropriate, then an amount of income equivalent to the amount of the taxable income (not the tax amount) in the other country is deducted by your company from the taxable income of the company related to your country). However, correlative adjustment regulations in tax treaties alone are not effective domestically. Therefore there need to be regulations in domestic laws that allow correlative adjustment, yet, there are no stipulations for this in Mongolian domestic laws. Without these stipulations, it will be difficult to come to agreement in mutual agreement procedures based on tax treaties for transfer price taxation.

2) An industry statistical database, operation of which is vital in transfer price taxation, depending on the calculation method, has not been introduced by the GDT. If this database is not used, then the GDT will not be able to use the TNMM (Transactional Net Margin Method), currently the most commonly used in transfer price taxation.

3) In Japan, too, methods (documentation) are stipulated in the Order for Enforcement of the Corporation Tax Act for taxpayers to verify whether or not their own related transactions are correct vis-à-vis the transfer price calculation method in the transfer price taxation system of their own country. Recently, the OECD has also proposed more far-reaching documentation to deal with BEPS (Base Erosion & Profit Shifting). In the Final Report on BEPS, the OECD requested that member countries require three types of documents from multinational corporate groups: per-country reports, master files, and local files. This applies to Japan as well, but Mongolia's tax system does not support this documental proposal in the Final Report on BEPS so far.

4) In addition, compared to Japan, Mongolia lacks the following systems, which are regulated in special acts (as in the case of the transfer price taxation system): tax haven measures, exemption systems for foreign subsidiary dividends, foreign tax credit systems, corporate inversion tax, thin capitalization tax, and excessive paid interest tax; as well as the international withholding income tax, non-resident tax, foreign corporate tax, international inheritance and gift tax, and international consumption tax that are regulated in the Corporate Tax Act, etc. in Japan.

The Final Report on BEPS presents six components for tax haven measures taxation (CFC (Controlled Foreign Company) taxation system), and advises the formation of efficient tax systems.

### **Recommendation**

- 1) Text concerning correlative adjustment in transfer price taxation must be promptly incorporated into domestic laws.
- 2) The per-industry database required for TNMM (Transactional Net Margin Method), the most commonly-used calculation method worldwide for transfer price taxation, should be introduced.
- 3) The OECD's Final Report on BEPS should be studied carefully, and legislation for

OECD-style documentation that requires more extensive explanations from taxpayers should be prepared promptly.

4) Regardless of the transfer price taxation system, broad-ranging international taxation fields such as listed above should be researched in comparison with the Final Report on BEPS and Japan's taxation systems, substantial legislation prepared, and discussed with the Ministry of Finance. At the very least, the GDT must prepare a chart of the work for preparing future legislation for international taxation fields other than transfer price taxation, with the focus on determining what areas are lacking through comparisons with Japan's taxation systems, and discuss this with the Ministry of Finance.

#### **5.1.4 Tax Treaties**

##### **(1) Activities and output by JICA Experts for Tax Treaties**

JICA experts pointed out the significance of the OECD Model Tax Convention as an international template. The project team translated the English text of the OECD Model Convention into Mongolian as appropriate, allowing officials to use it more efficiently. In addition, the various workshops also compared domestic tax laws with the OECD Model Convention, providing guidance to allow officials to use the Convention in practical ways for examinations.

##### **(2) Current State, Issues, and Recommendation for Tax Treaties Mongolia Has Signed**

The current state of the treaties Mongolia is signatory to, along with issues and recommendation, was provided through a comparison with both the OECD and UN Model Conventions as well as the major treaties Japan is signatory to. As a prerequisite to this, there are some basic points regarding the tax treaties thus analyzed, which will be presented first.

##### **[Basic points for studying tax treaties: article numbers refer to the OECD Model Convention]**

- Are the requirements for PE certification in regard to the article on permanent establishments (Article 5) appropriate?
- Does the article on business profits (Article 7) follow the OECD-style attributable income principle? Are the AOA principles from the Model Convention brought in?
- With regard to the article on special associated enterprises (Article 9), is the article on correlative adjustment brought into the treaty?
- With regard to the article on dividend income (Article 10), should there be preferential tax rates between parent companies and subsidiaries?
- With regard to the article on interest (Article 11), should that for the central bank be tax-free?
- With regard to the article on royalties (Article 12), are lease charges applied to royalties,

whether taxed in the state of residence or the state where earned?

- From the perspective of the US-Japan Tax Treaty, with regard to the preferential tax rate for the investment article, should the LOB (Limitation on Benefit) and the conduit deal article, which require certain conditions for application, be brought in?
- With regard to the article on capital gains (Article 13), is the 50% of value condition applied to the capital gains tax requirements for shares embodying immovable property (over 50% of the value of the alienated stock is immovable property)? How far is stock similar to business alienation regulated, and are other assets OECD-style taxed in the state of the transferor or taxed in the state where the assets reside?
- Is an exemption article for professors (no OECD equivalent) included?
- With regard to the article on students (Article 20), will a limitation on the expenses for which tax is waived be brought in?
- With regard to the article on foreign tax exemptions (Article 23), should the tax credit method be used? Is the tax sparing/credit article eliminated?
- With regard to the article on mutual agreement (Article 25), is the period of mutual agreement petition period three years? Is there an article on the implementation of mutual agreement? Are mutual agreement notifications used?
- With regard to the article on the exchange of information (Article 26), is exchange of information refused due to being bank information?
- With regard to the article on assistance in the collection of taxes (Article 27), are there regulations on the collection assistance itself?

### **(3) Current State of Tax Treaties Mongolia Has Signed, Issues, and Presentation of Recommendation from the Perspective of the Above Points.**

#### **Current state, issues, and recommendation for the PE article (Article 5-(3) of the OECD Convention)**

##### **• Qualification period for building PE**

**Current State:** Some of the tax treaties that Mongolia has signed have long PE periods, such as more than 18 months (Mongolia-China Treaty Article 5-(2)-a and Mongolia-UAE Treaty Article 5-(3)) or more than 24 months (Mongolia-Russia Treaty Article 5-(2)-g and Mongolia-Turkey Treaty Article 5-(2)-g). Other treaties that Mongolia has signed range from more than 12 months to more than 3 months (Mongolia-Kuwait Treaty Article 5-(3) only). In the OECD Model Convention, more than 12 months is standard. In the UN Model Article 5-(3)-a, the PE qualification period is a rather short more than 6 months.

**Issues:** Compared to the UN or OECD Model Tax Conventions, the PE qualification period for the treaties with China and Russia is too long. As Mongolia is an inbound economy, setting

qualification periods like this with China and Russia will lead to problems in examinations. In addition, as has also been pointed out in the recommendations for Article 5-(3) of the OECD Model Convention in BEPS, even if the qualification period is more than 12 months, arbitrary splitting of contracts is easily done, making this an issue for examinations. In the Final Report on BEPS, it states that “in the event that closely-related companies (companies with a greater than 50% controlling relationship) etc. are used deliberately to split the contract period so it never exceeds 12 months, then the split contract period will be totaled automatically.” In Paragraph 3-18 of the Commentaries on the OECD Model Convention, it says “[enterprises] divided their contracts up into several parts, each covering a period less than twelve months” in order to avoid the PE qualification period, which is problematic.

**Recommendation:** There should be consistency with the PE qualification periods (more than 12 or more than 6 months) in the UN and OECD Model Conventions. Incidentally, in the US-Japan Treaty, the construction PE is more than 12 months, while in the China-Japan Treaty, it is more than 6 months.

• **PE qualification periods for construction consulting**

**Current State:** This is set at more than 18 months in the Mongolia-China Treaty Article 5-(3)-b). In the UN Model Article 5-(3)-a), it is more than 6 months. There is no article on consulting in the OECD Model.

**Issues:** There is a considerable difference between the treaty with China and the UN Model Convention, and is too long.

**Recommendation:** The qualification period in the treaty with China should be made consistent with the more than 6 months in the UN Model regulations. Incidentally, the China-Japan Treaty sets the PE qualification period for consulting for construction at a period of at least 6 months out of a continuous 12 months. However, when consulting work is related to the sale or lease of machinery or equipment, then, regardless of the period, this shall not be seen as PE. There is no article on consulting in the US-Japan Treaty.

• **Preparatory or auxiliary activities (OECD Model Convention Article 5-(4))**

**Current State:** The regulation on “preparatory or auxiliary activities” is one that formally certifies PE.

**Issues:** While these may be “preparatory or auxiliary activities,” in truth they are activities that form an essential and major part of a company’s activities as a whole, and should be certified as PE. The recommendations for Article 5-(4) of the OECD Model Convention in the Final Report on BEPS stipulates the following: “1. Rather than the type of activity, determine based on the reality of it, and only exclude ones of a preparatory or auxiliary nature from PE. 2. Even

subdivided tasks, if operated as a single unit, and seen as a whole cannot be considered preparatory or auxiliary, then it should be considered PE.”

**Recommendation:** As in future PE will be considered based on actual case judgments even for this clause, it is important to carefully consider the thinking process for BEPS in treaty revisions, etc.

• **Certification of agent PE (OECD Model Convention Article 5-(5))**

**Current State:** An agent who habitually maintains ownership of stock of goods is not considered to be PE in contracts Mongolia is signatory to.

**Issues:** The UN Model considered agents with habitual ownership of stock of goods to be PE as well. In Article 5-(5)-b) of the UN Model, it stipulates “Has no such authority [to conclude contracts in the name of the enterprise], but habitually maintains in the first-mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise.” The recommendations for Article 5-(5) of the OECD Model Convention in the Final Report on BEPS expands the definition of agent PE, stipulating that “1. If a person acting on behalf on a (foreign) corporation enters into a contract with regard to the provision of goods and services owned by (foreign) corporations in the name of a person acting on behalf of said (foreign) corporation; or 2. a person acting on behalf of a (foreign) corporation ‘plays the principle role leading to the conclusion of contracts,’ then the person acting on behalf of a (foreign) corporation shall be the agent PE.”

**Recommendation:** Study the Final Report on BEPS from the OECD which discusses the mitigation of PE qualification requirements, and use it as reference for future treaty negotiations. In the US-Japan Treaty, as the agent maintaining a stock of goods is not the agent obtaining orders or the dependent agent, they are not PE. In the China-Japan Treaty as well, the agent maintaining a stock of goods is not PE, but the agent obtaining orders is PE, as the dependent agent.

• **PE certification for insurance company agents**

**Current State:** There are no regulations for PE qualification for insurance companies.

**Issues:** Like the UN Model, there should be regulations for requirements that allow agents of insurance companies to be certified as PE. In the OECD Model Convention, while there are no clear regulations regarding insurance companies, Paragraph 6-39 of the Commentaries on the OECD Model Convention, states “Since agencies of foreign insurance companies sometimes do not meet either of the above requirements [for PE], it is conceivable that these companies do large-scale business in a State without being taxed in that State on their profits arising from such business,” and Article 5-(6) of the UN Model Convention regulates that “an insurance enterprise



of a Contracting State shall be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated therein through a person other than an agent of an independent status.”

Incidentally, the US-Japan Treaty and the China-Japan Treaty both lack clear mention of insurance companies (there are some regulations for insurance companies in the treaties Japan has with the Philippines, Vietnam, and Mexico).

**Recommendation:** It would be beneficial to consider PE for insurance companies in future, referencing the OECD Model Convention Commentary and the UN Model Convention.

• **Independent Agent Regulations (OECD Model Convention Article 5-(6))**

**Current State:** There are no regulations in treaties to which Mongolia is signatory regarding cases when someone who is formally an independent agent is in practice a dependent agent.

**Issues:** Sentence 2 in Article 5-7 of the UN Model Convention sets the conditions under which someone who is formally an independent agent becomes a dependent agent with PE. In other words, if their activities are different from those normal for an independent agent, they cannot be considered independent agents who do not have PE. Mongolia’s treaties do not consider this sort of regulation. The UN Model should be referenced for interpretation. The second sentence in Article 5, Paragraph 7 of the UN Model Convention stipulates the following.

“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 enterprises, he will not be considered an agent of an independent status within the meaning of this paragraph.” In the recommendations for Article 5-(6) of the OECD Model Convention in the Final Report on BEPS, independent agents are regulated in BEPS as follows: “Independent status is less likely if the activities of the agent are performed wholly or almost wholly on behalf of only one enterprise over the lifetime of the business or a long period of time.”

**Recommendation:** The ideas regarding independent agents in the UN Model Convention are the same as those in the Final Report on BEPS. Therefore PE certification for independent agents should be done in a real sense, and for that reason, revisions to the text of the treaties should be considered.

Incidentally, the US-Japan Treaty and the China-Japan Treaty both have contracting agents as dependent agents who fall under PE, while those who do not are independent agents and subsidiaries. However, even independent agents and subsidiaries are considered PE if it is certified that they meet the conditions for dependent agents (for example, if they habitually act with the authority to conclude contracts).

• **Content of services and PE**

**Current State:** Article 5-(3)-b) of the China-Mongolia Treaty and Article 5-(4) of the UAE-Mongolia Treaty set the PE qualification period at 18 months.

**Issues:** Service PE was introduced in 42.23a) and b) of the 2008 OECD Model Tax Convention Commentaries (it is not mentioned in Article 5 of the OECD Model Convention). In other words, according to the commentaries, the regulations call for a standard of 183 days and 50% of the overall income for service. Incidentally, the US-Japan Treaty and the China-Japan Treaty both do not regulate service PE. However, the Thailand-Japan Treaty lists consulting work as PE.

**Recommendation:** PE qualification period of 18 months is too strict, and not just for service PE. Reference should be made to the commentary on Article 5 of the OECD Model Convention.

• **The business income article (Article 7 of the OECD Model Convention)**

**Current State:** Tax treaties to which Mongolia is signatory have an article for business income, and stipulate the principle that if it is not PE then it is not taxed as well as the attributable income principle. However, there are no regulations for the AOA principle as seen in Article 7-(2) of the OECD Model Convention. AOA (Authorized OECD Approach) principle stipulates that when calculating the income attributable to PE, the functions, assets, and risk of the relevant PE shall be considered in said calculation. Incidentally, the US-Japan Treaty and the China-Japan Treaty both have the attributable income principle, but not the AOA principle. In addition, the attributable income principle is stipulated in other treaties, with the exception of the UK-Japan Treaty, but the AOA principle has not yet been brought in.

**Issues:** At present AOA is not recognized in Mongolia. It will be difficult to negotiate future tax treaty revisions without considering the introduction of the AOA principle.

**Recommendation:** As of January 2015, Japan incorporated an amendment protocol into the December 2013 UK-Japan Tax Treaty. However, future treaty revisions by Japan will probably include regulations for calculation methods based on the AOA. Therefore, it would be better to prepare a draft of a treaty text for which the incorporation of this regulation could be discussed with the other state during all tax treaty revision negotiations by Mongolia, referring to the text of the AOA regulation in Article 7-(2) of the OECD Model Convention.

• **The special related businesses article (Article 9 of the OECD Model Convention)**

**Current State:** There are no treaty regulations for correlative adjustment with Germany, Canada, India, Belgium, Singapore, Malaysia, Poland, the Czech Republic, Luxembourg, Ukraine, Vietnam, etc.

**Issues:** If a regulation on correlative adjustment is not incorporated in tax treaties, there is a

greater possibility that economic double taxation will not be eliminated. In other words, if economic double taxation arises in transfer price taxation for one's own state, then there is the chance that discount processing will not have in the state that is the other party to the contract for income taxed in one's own state.

However, even if there is a clause for correlative adjustment, vigilance is still required. This is because if, provisionally, there are no law related to correlative adjustment in the domestic laws of one's own state, then there is the chance that income reduction will not be possible in the form of correlative adjustment in one's own state for transfer price taxation in the other state. There is the chance that the other state will also foresee this, and not agree during mutual agreement procedures on transfer price taxation in one's own state. Correlative adjustment requires not only tax treaties, but domestic laws as well.

**Recommendation:** As shown in Article 9-(2) of the OECD Model Convention and Article 9-(2) of the UN Model Convention, stipulations on correlative adjustment must be included in treaties. Treaties that do not take into account preventing economic double taxation for transfer pricing will have problems in terms of international taxation theory. There is a correlative adjustment clause in the US-Japan Treaty, but none in the China-Japan Treaty. In addition, the treaties between Japan and Belgium, Poland, and Czechoslovakia have no correlative adjustment clauses (Japan has no tax treaty with Ukraine).

• **Recommendation for the dividend income article (OECD Model Convention Article 10)**

**Recommendation:** The tax rate for dividends between parent company and subsidiary vis-à-vis that for general dividends should be consistent with the OECD Model Convention. The general tax rate should be 10% and the parent company-subsiary tax rate should be 5%.

• **Recommendation for the interest article (OECD Model Convention Article 11)**

**Recommendation:** In the withholding tax rate for the interest clause in future revisions to treaties to which Mongolia is signatory, the tax rate related to the central bank should be distinguished from other banks or general corporations, and a rate of 0% or a reduced tax rate should be considered.

• **Recommendation for the royalties article (OECD Model Convention Article 12)**

**Recommendation:** In negotiations with other countries for revising tax treaties to which Mongolia is signatory, a "Limitation on Benefit clause" such as in the US-Japan Treaty should be introduced when changing to a country of residence taxation basis in the future. However, even Japan, which until recently used source-country taxation in consideration of the economic

environment, so there is no urgent need to move to an OECD-style country of residence taxation basis.

- **Recommendation for the Limitation on Benefit (LOB)**

**Recommendation:** Mongolia needs to understand the treaty abuse clauses in BEPS and create a number of model articles. In addition, Mongolia needs to prepare for discussions with its treaty counterpart nations on introducing this sort of LOB clause, etc. Incidentally, the US-Japan Tax Treaty already has a LOB clause in Article 22, and in Paragraph (11), Article 10, it regulates conduit deals. This LOB clause is also recommended in the Final Report on BEPS to be created for tax treaties in order to prevent treaty abuse.

- **Recommendation for the capital gains article (Article 13)**

**Recommendation:** Like the OECD and UN model conventions, introducing a value condition of 50% to the capital gains clause (gains derived by a resident of a Contracting State from the alienation of shares deriving more than 50 percent of their value directly or indirectly from immovable property situated in the other Contracting State may be taxed in that other State) or making it, in principle, taxed based on the country where the immovable property is located, would be the clear choice. As far as possible, revisions to the capital gains article in treaties Mongolia is signatory to should be made to match a stocks clause similar to business alienation in the China-Mongolia Tax Treaty. An ownership requirement of 25% and a sales requirement of 5% will be fine.

- **Recommendation for Professor exemption article (no OECD equivalent)**

**Recommendation:** All tax treaties Mongolia is signatory to should include a professor exemption clause. Making only students tax-exempt will not be good from the perspective of educational exchange.

- **Recommendation for the students article (Article 20)**

**Recommendation:** Limitations on tax-free costs in the students' article should be eliminated.

- **Recommendation for the foreign tax exemption article (Article 23)**

**Recommendation:** Regulations in domestic laws for foreign tax exemption limits should be prepared if a tax exemption system is to be introduced. The tax sparing article should be eliminated from tax treaties Mongolia is signatory to.

- **Recommendation for the mutual agreement article (Article 25)**

**Recommendation:** Three years is appropriate for the mutual agreement petition period for tax treaties Mongolia is signatory to. There should be a clause for carrying out agreement based on mutual discussions in the mutual agreement articles of tax treaties. Mutual agreement notifications should be issued.

• **Current State, Issues, Recommendation for the exchange of information article (Article 26)**

**Current State:** There are no clauses in, for example, the tax treaties that Mongolia has with Singapore, Canada, or China that prohibit any refusal to provide information if such refusal is based on the information being financial institution information as defined in Paragraph (5), Article 26 of the OECD Model Convention.

**Issues:** The following provision in Paragraph (5), Article 26 of the OECD Model Convention is missing (note that the UN Model Convention referenced this text (UN Model Commentaries, Paragraph 5-27), and the same text is found in Paragraph (5), Article 26): “In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution”

**Recommendation:** For information from banks, it is essential that care is taken when considering the collection of information from banks in future, with a thorough consideration of the relationship between the GDT and banks in Mongolia.

In examinations by Japan’s NTA, checking accounts (called “bank surveys”) by the national tax agency or tax offices sending people to banks to examine the accounts of taxpayers targeted for examinations in corporate tax is arranged with the banks, and an obvious matter. In addition, if examiners cannot actually go to the banks and check the accounts, etc. of taxpayers, then it will not be possible to know the truth about these taxpayers. In information exchange as well, it is not possible for banks to refuse to provide information for the reason that bank examinations are not possible (such as due to bank secrecy).

Therefore, for example, in Article 26 of the US-Japan Tax Treaty, even if there is no clause like in Paragraph (5), Article 26 of the OECD Model Convention stating that it is impossible to refuse to provide information due to bank secrecy, in actual use, there are absolutely no issues with carrying out bank examinations and providing true information owned by a taxpayer. This is because it is a normal task of bank examinations during corporate tax examinations domestically, and corporate tax examinations that do not involve bank examinations are not considered to be proper examinations.

• **Current state, issues, and recommendation for the assistance in the collection of taxes article (Article 27)**

**Current State:** There are no regulations whatsoever in the main treaties to which Mongolia is signatory regarding the “collections assistance” in Article 27 of the OECD and UN model conventions. For example, there are no regulations on collections assistance in the treaties between Mongolia and China, Singapore, or Canada.

**Issues:** If the regulations on collections assistance in Article 27 of the OECD and UN model conventions are not included in tax treaties, then the tax authorities will not be able to collect taxes over and above their taxation jurisdiction. Incidentally, there is a regulation for collections assistance in Article 27 of the US-Japan Tax Treaty, as well as Article 27 of the Singapore-Japan Treaty and Article 24-A of the Canada-Japan Treaty. However, there are no regulations for collections assistance in the China-Japan Tax Treaty.

**Recommendation:** Now, with the growing number of international transactions, regulations on collections assistance should be incorporated in tax treaties.

## 5.2 Human Resource Development of International Taxation Field

### 5.2.1 Basic Policy

The executive ability levels for international taxation systems in the GDT regarding the development of human resources for core officials in International Taxation are set as follows, and implemented on the assumption of a development process from entry level to intermediate to advanced.

Table 1. Executive Ability Levels for International Taxation Systems

Level	Abilities related to knowledge of systems (knowledge skills)	Abilities related to enforcement of systems (examination skills)
Entry-level	Understand the basic framework of international taxation, and also the international taxation systems of Mongolia in connection with the specific text of treaties, laws, and notifications.	Understand the systems related to basic international transactions, such as goods and services and finance, and be able to appropriately judge the taxation relationships (facts of the requirements and applicable laws) for specific individual transactions.
Intermediate	Accurately understand the features of the Mongolian international taxation system as compared with the OECD Model Tax Convention text and goals, and the international taxation systems of other countries.	Accurately understand complex international transactions and international transactions between related parties such as between parent companies and affiliates or head offices and branches, and be able to appropriately judge the taxation relationships for specific individual transactions.
Advanced	Accurately and promptly understand issues in Mongolia's systems within the dynamically changing international taxation landscape, and be able to provide useful and appropriate taxation system reform proposals to suit the circumstances.	Accurately determine and understand advanced, complex international taxation avoidance schemes within international transactions, and be able to appropriately judge the taxation relationships for specific individual transactions.

To improve both “Knowledge skills” and “Examination skills,” training based around the theoretical aspects of both were combined with workshops that used specific examination cases as materials, working to enhance the abilities of participants to solve problems and to carry out tax examinations.

**(1) Enhancing Problem-solving Abilities**

The framework of international taxation in Japan is as follows.

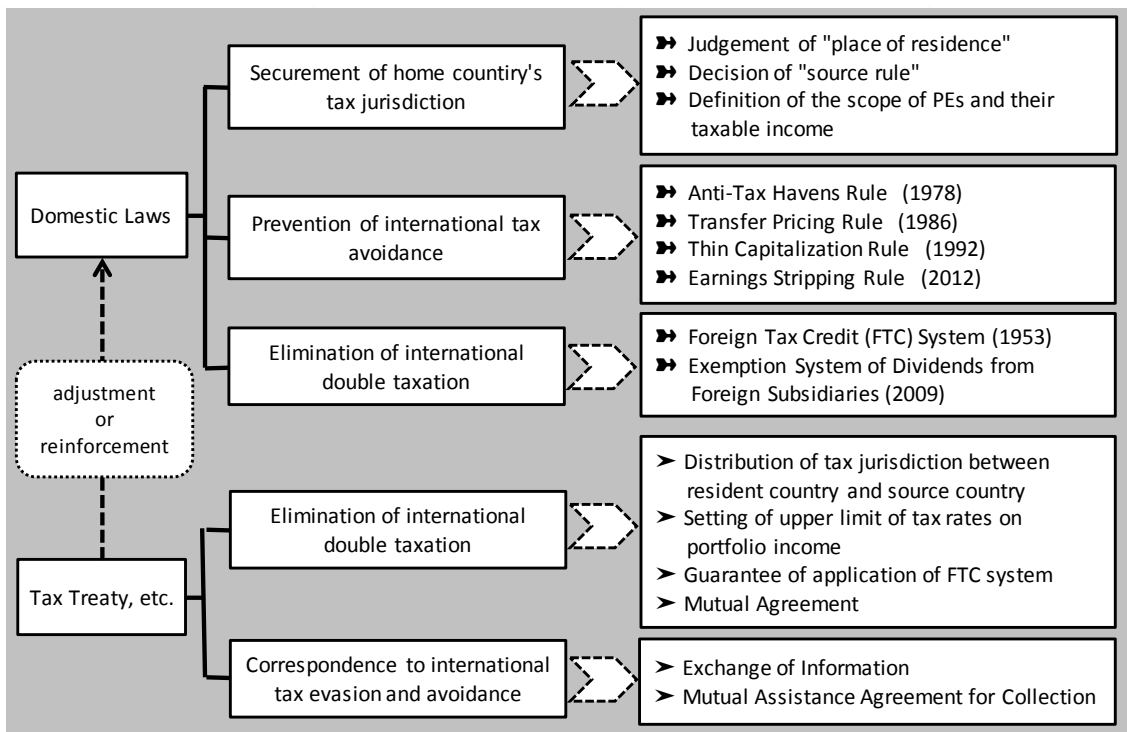


Fig. 1 Framework of International Taxation in Japan

In general, this framework was used in training to help strengthen the problem-solving abilities of officials for the international taxation systems in their own country, in the following five steps.

STEP 1. Master basic knowledge of international taxation.

STEP 2. Consider the ideal system for international taxation from the aspects of both institutions and enforcement.

STEP 3. Analyze and understand the current status of the international taxation system in Mongolia.

STEP 4. Discover the issues in the international taxation system in Mongolia.

STEP 5. Study and put forward solutions to the issues in the international taxation system in Mongolia thus discovered.

## (2) Strengthening Tax Examination Abilities

To enforce taxation appropriately, it is necessary that the thinking processes for legal syllogisms function accurately for each tax examiner. In the workshop, international taxation case studies from Mongolia were used as issues, and participants gave presentations and held discussions on these. This allowed them to determine through mutual verification how accurately they grasped and assessed the facts of the cases, how accurately they were selecting the laws or notifications to apply, and whether their interpretations were logical and the conclusions they reached were appropriate. The goal was to strengthen their abilities in tax examinations through developing their legal thinking abilities in terms of international taxation.

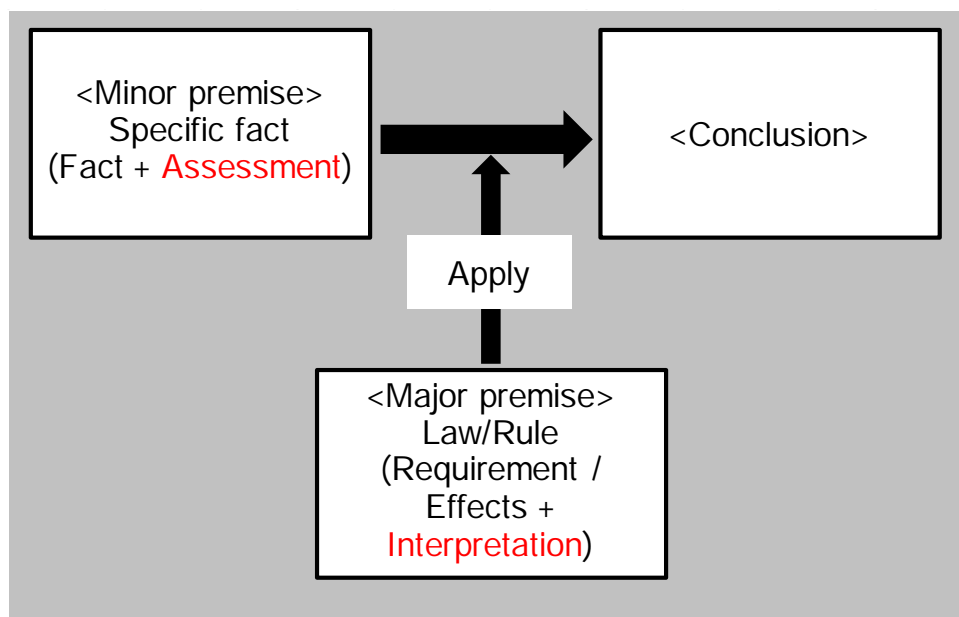


Fig. 2. Conceptual Diagram of a Legal Syllogism

From the perspective that it is necessary to increase the overall capacity and ensure people who can carry out international taxation work in the medium to long term at the GDT, even for general staff, rather than just core staff, wide-ranging training was implemented for tax officials who are responsible for investigating foreign corporations in particular in order for them to master the basic knowledge of international taxation, using core staff as the main instructors. At the same time, the goal was also to promote the creation of a program whereby international taxation personnel may be requested autonomously within the GDT.

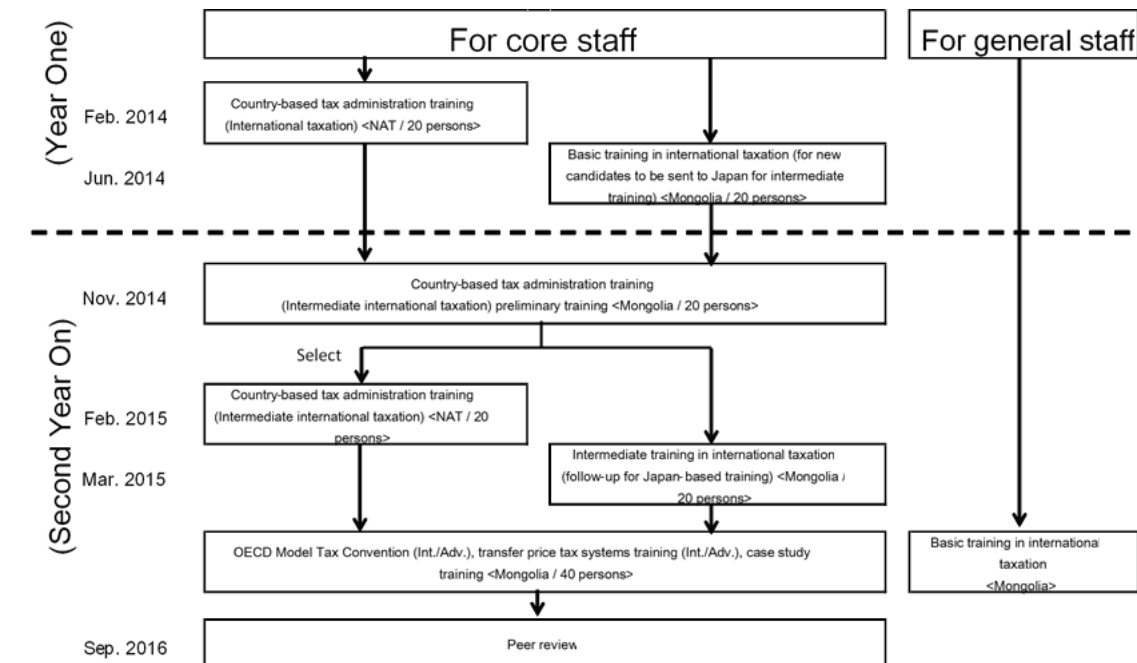


In addition, for specific themes, training was carried out by instructors dispensed from the NTA in Japan. Trainees were able to get the latest, practical information directly from tax officials currently working in Japan, and this appears to have been an excellent chance for some human-based exchange between tax agencies in Japan and Mongolia, which do not yet have a tax treaty signed between them.

### 5.2.2 Implementation Plan and Track Record

The implementation plan and actual results of the human resources development training are shown below. Training was carried out as scheduled for a total of 464 people, and from the results of examinations such as the questionnaire, we were able to confirm that all goals were achieved and the training was extremely effective.

Fig. 3. Human Resources Development Implementation Plan



No.	Training	Period	Location		Instructor	No. of Participants
1	Training in Japan (1) "Introduction to International Taxation"	Feb 16 - Mar 1, 2014	JPN	JICA TIC	NTA National Tax College faculty	22
2	International taxation training for senior officials in the GDT	Apr 9 - 11, 2014	MNG	GDI	JICA specialists	27
3	Training by dispatched NTA officials (1) "Information Exchange"	May 19 - 21, 2014	MNG	GDI	NTA National Tax College faculty	40
4	Core staff training (1) (Entry-level, follow-up)	Jun 25 - Jul 4, 2014	MNG	GDI	JICA specialists	21
5	Core staff training (2) (Preliminary training before dispatch to Japan)	Nov 17 - 28, 2014	MNG	GDI	JICA specialists	40
6	Training in Japan (2) "Intermediate International Taxation"	Feb 16 - 27, 2015	JPN	JICA TIC	NTA National Tax College faculty	21
7	Core staff training (3) (Intermediate, follow-up)	Apr 6 - 10, 2015	MNG	GDI	JICA specialists	28
8	General staff training (1)	Aug 17 - 21, 2015	MNG	GDI	Training Center instructors JICA specialists	48
9	Core staff training (4) "OECD & UN Model Tax Conventions"	Feb 29 - Mar 4, 2016	MNG	Ulaanbaatar Capital Customs Department	JICA specialists	35
10	General staff training (2)	Mar 7 - 11, 2016	MNG	Bayanzurkh District Tax Office	Training Center instructors JICA specialists	50
11	Training by dispatched NTA officials (2) "Foreign Transaction Investigation Methods"	Jun 21 - 23, 2016	MNG	Customs/GDT	NTA National Tax College faculty	53
12	General staff training (3)	Sep 19 - 23, 2016 (scheduled)	MNG	GDI	Training Center instructors JICA specialists	50
13	Core staff peer review	September 27, 2016 (scheduled)	MNG	GDI	JICA specialists	29

Table 2. Human Resources Development Training Implementation Track Record

## 5.2.3 Training Content

### (1) Core Staff

For the entry level training, the basic concepts and rules are learned. These are resident/non-resident, source rules, PE: Permanent Establishment, international tax avoidance rules (tax systems to deal with tax havens, transfer price taxation, excess capital taxation, excess payment interest taxation), international double taxation avoidance rules (foreign tax credit system, foreign income exemption method), and tax treaties.

In intermediate-level training, along with learning advanced knowledge on the two themes of transfer price taxation and tax treaties, which are assumed to become urgent issues for Mongolia, through case studies, etc., trainees analyzed the current state and issues with the international taxation system in Mongolia in a workshop format, and discussed using case studies. These were designed to foster their abilities to apply their knowledge and put it into practice.

### (2) General Staff Training

Efforts were made to ensure general staff mastered the basic knowledge of international taxation using a curriculum based on the entry-level training for core staff. The instructors for

most of the courses in this training were not JICA experts but training center instructors (selected from among the core staff), due to the need to promote the construction of an independent training program in the future by the GDT itself.

### **(3) Other Training**

Training was carried out on ad hoc themes (information exchange, foreign transaction examination methods) by inviting staff from the NTA in Japan (the National Tax College), based on a request from the GDT.

#### **5.2.4 Future Issues**

In September 2015, while this project was still underway, the final report of the OECD/G20 / BEPS project, which was started in June 2012 as a way to counter the tax dodging mechanism known as BEPS (Base Erosion and Profit Shifting) used in foreign transactions by multinational corporations, was published, and it recommended that the package suggested in this report be implemented by all countries, including developing ones.

It is clear that in future, domestic and foreign international taxation rules will be constructed around this BEPS package, and in Mongolia too, the training of people who can respond to this trend through the measures outlined below is urgently required.

##### **(1) Training Even Higher-level Staff**

In this project, with the cooperation of Japan's NTA, we feel we have been able to improve the ability of core staff to deal with international taxation to the intermediate level. However, we need to increase the level further, working to train staff at the advanced level who can deal with a range of international taxation issues, including BEPS.

##### **(2) Follow up on Core Staff**

It needs to be guaranteed that the work of the officials who have learned skills and knowledge through this training will be effective. If these officials are transferred to sections unrelated to international taxation or move into the private sector, this will be a loss of resources, and the GDT and this project need to work together to study measures of dealing with this risk.

##### **(3) Expanding the Base of International Taxation Training**

In order to deal with the expected rapid and complicated changes in the international taxation landscape, there needs to be a total strengthening of ability, covering systems, organizations, and individuals. From the medium to long term perspective, it is not enough to have only a handful of officials be able to deal with these issues, and it is necessary to expand those targeted for international taxation training and ensure future international taxation personnel. As specific

measures, general staff training needs to be linked with the agency's human resources strategy and regular training used to ensure the knowledge is retained within the organization.

### **5.3 Tax Collections Field**

#### **5.3.1 Foreword**

The purpose of this project is to reduce collections costs and liquidate delinquency through the installation of a Tax Debt Call Center (hereinafter TDCC) and improvements to collections work. In order to achieve these goals, after (1) analyzing the status of tax delinquency in Mongolia and determining the necessity of promoting delinquency liquidation, (2) an analysis of the current state and issues regarding delinquency liquidation work and recommendation for improvement in regard to improving collections work were provided as well as recommendation on understanding the details of the current collections system and improving legal systems; and (3) in terms of the establishment of a TDCC, provide materials related to TDCCs in Japan and the necessary advice for the operation of notification tasks.

The following is a general summary of the initiatives carried out during the project period (January 2014 to October 2016).

#### **5.3.2 Tax Delinquency Situation and the Necessity of Promoting Delinquency Liquidation Based on This**

##### **(1) Analysis of the Tax Delinquency Situation**

###### 1) Trends in the amount already determined for current fiscal year collection

The amount for new taxation in the current fiscal year (finalized collection amount) increased to 2,756 billion tg in 2013, but returned to the pre-increase level the following year, then increased again in 2015 to 2,412 billion tg.

###### 2) Liquidation status of new taxation amounts and past year amounts

The new collection amount and the amount of delinquency of the new amount that has been liquidated are linked to the finalized collection amount, but in FY2015 its growth slowed. The liquidated amount for the past fiscal years were 410.9 billion tg in 2013 and 399.2 billion tg in 2014, but in 2015, it increased 158.7% over the previous year to 494.2 billion tg.

###### 3) Changes in delinquency balance

The delinquency balance has been growing yearly, and was kept around 450 billion tg in 2013 and 2014, but in 2015 it rapidly increased 158.5% over the previous year to 695 billion.

Taxation Delinquency Status

(Unit: 1B tg, %)

Category	Fiscal Year			
	2012	2013	2014	2015
<b>(For current fiscal year)</b>				
A				
New tax levies	2103.4	2756.0	2229.8	2412.0
B				
New collection amounts and liquidated amount of delinquency	1716.9	2465.4	2003.4	2064.7
(B÷A)				
(New collection/liquidation ratio)	81.6	89.5	89.9	85.6
C (A – B)				
New delinquencies amount	386.5	290.6	226.4	347.3
(C÷A)				
(New delinquencies generation ratio)	(18.4)	(10.5)	(10.1)	(14.4)
<b>(For past fiscal years)</b>				
[1] (Balance at end of previous fiscal year)				
Amount carried forward from past fiscal year)	469.8	572.7	611.4	841.9
[2]				
Past fiscal year liquidated amount	330.6	410.9	399.2	494.2
([2] ÷ [1])				
(Past fiscal year liquidated ratio)	(70.4)	(71.7)	(65.3)	(58.7)
(3) ([1] – [2])				
Past fiscal year delinquency balance	139.2	161.8	212.2	347.7

<b>(Total of current and past fiscal years)</b>				
A + [1] Current/past fiscal year collection finalized amount	2573.2	3328.7	2841.2	3253.9
B + [2] Collected amount and delinquency liquidation amount (B + [2])÷(A + [1]) (Liquidation ratio)	2047.5 (79.6)	2876.3 (86.4)	2402.6 (84.6)	2558.9 (78.6)
C + [3] (Amount carried forward to next period) Delinquency balance	<79.6> 525.7	<86.1> 452.4	<96.9> 438.6	<158.5> 695.0

## **(2) Necessity of Promoting Delinquency Liquidation Seen from Delinquency Situation**

Looking at the tax collection situation, the delinquency amount accounts for 21.4% of the collection finalized amount that should be collected (the amount of new tax for the current fiscal year + the amount of delinquency carried over from the previous fiscal year).

Taxation provides the financial support for a country to exist, and ensuring tax collection forms the foundations for that country's activities. From this perspective, to cover the increasing financial demands caused by economic expansion, and to achieve fairness in taxation as well, it is necessary to work to improve delinquency liquidation enforcement as well as to strengthen the legal systems and collect the tax that is in arrears.

### **5.3.3 Current Situation of Delinquency Liquidation Enforcement and Advice for Improvement**

#### **(1) Issues with the Enforcement System in the Collections Dept. and Advice**

Until December 2014, the Collections Department of the GDT was responsible for both taxation work (encouraging declarations, acceptance of declarations, entry of declaration deeds) and collection work. Taxation work tended to get priority, and most of the work was spent on this, so collection and liquidation work tended to get neglected.

#### **Recommendation**

It is vital to separate taxation and collection work in order to ensure sufficient efforts are spent on collection work, and also to increase the specialist expertise of the officials. For that

reason, when reviewing the operational system in future, we advised that efforts be made to completely split the taxation and collection work and to improve the system to allow collection officials to concentrate on delinquency liquidation.

[The operational system was later revised, and as of January 2015, the following changes have been made: 1) The tasks from declaration encouragement work and declaration acceptance to screening which were carried out by the Tax Collection Administration & Methodology Department have now been transferred to the Taxpayer Services Department. 2) The revenue administration work and refunds work carried out by the Risk Management Department have been transferred to the Tax Collection Administration & Methodology Department. 3) The income withholding work carried out by the Taxpayer Services Department has been transferred to the Tax Collection Administration & Methodology Department.]

## **(2) Collection Work Implementation Status**

### 1) Issues with the system for sending notifications, and our recommendation

One of the tasks that takes the most time in tax collections work in Mongolia is the sending of payment notifications. In Mongolia, postal notifications are almost never used. The reasons for this are ①when confiscating payments directly from bank accounts, the work procedures require the signature of the delinquent taxpayer to acknowledge payment notification, so the payment notification is as a rule hand-delivered; ②the postal system in Mongolia is unreliable; ③the delinquent taxpayer is often absent or has moved address, or this information is not promptly reflected in the taxpayer data management system; and ④it can be hard to understand the precise address due to the relationship with the address registration bureau.

As a result, the hand-delivery system used as a supplement in Japan is the delivery system used as a general rule in Mongolia. This requires a lot more work than using the postal service, and there are many cases where an official will go to an address and find that the person in question is absent or has moved, so the documents cannot be delivered. This all has been a major handicap to progress in work processing.

### **Recommendation**

We provided advice in the form of a document, “Revisions and Improvements to the Transmission of Notifications by Using Postal Transmission,” using the Japanese regulations on sending documents (Article 12 of the Act on General Rules for National Taxes) as reference, the current state of and issues with sending documents in Mongolia, response measures, legal treatment, and so on.

[From 2016, the notification system was revised to use postal mail, with a contract signed with the central post office ( hereinafter CPO) , and a system constructed to send notifications to

delinquent taxpayers from the CPO by sending the address data to the CPO. This is not only prevents notifications from not being delivered, but also the taxpayer data for documents returned due to unknown address can be quickly modified for changes of address, replacements of representative directors, etc. using TRIPS (Total Revenue Information Processing System), a system for correcting taxpayer-related data)]

2) Issues related to highly specialized work processing and internal work processing, and our advice

A great deal of time is spent on the procedures for seizing assets and applying to the court (creating application documents, collecting proof materials, etc.) and other highly specialized work, as well as internal work like the collection and creation of basic materials that form the basis for work administration materials, and the work of writing up records of delinquency processing status.

### **Recommendation**

As the collections officials are not well versed in highly specialized work processing procedures, we assume that this work is not done very efficiently. Therefore, to improve this, we advised that it would be necessary to prepare a Delinquency Liquidation Handbook (Manual) and that collections officials would have to undergo sufficient training. In addition, for internal work, we advised that it would be necessary to prepare an Internal Work Processing Guidelines or a Collections Work Handbook (Manual).

[The Delinquency Processing Handbook (Manual) was prepared jointly with the GDT for collections staff to help them with their training.]

3) Issues related to work management, and our advice

Managers in collection work are required to allocate workloads efficiently in order to encourage efficient collection work and to accurately manage work tasks such as selecting key measures. In Mongolia, however, management materials required for managing work are not sufficiently organized.

### **Recommendation**

To ensure work runs smoothly, the work management materials used for collections work in Japan (individual case progress tables, study charts that help with studying task planning formulation and performance, work status tables, etc.) were translated into Mongolian and provided.

4) Issues related to processing large accounts and hard-to-process cases, and our advice

There are no special departments or specialists for processing large accounts and hard-to-process cases, so it is hard for the collections officers alone to deal with cases like this. This causes problems of delinquency accumulating and growing longer, leading to further processing problems, and being neglected.



## **Recommendation**

We advised that a specialist department or specialist officials well-versed in collections skills would need to be put in place to handle these cases.

### **5.3.4 Related to System Development (Legal Systems)**

#### **(1) Regarding Issues in the Legal Systems**

The collections procedures for taxation in Mongolia are not completely regulated as independent laws, but are only regulated as the series of regulations for collections procedures in Chapter 8, “Taxation in Arrears Unpaid During the Payment Period” of the General Law of Taxation Methods in Mongolian Law” (the “General Law of Taxation”), a generalist law that stipulates matters shared among the various tax laws. More specific collections procedures are regulated by the operational regulations in GDT Commissioner Notification No. 220 of October 28, 2008 (the main regulations and commissioner notifications for collections procedures in the current General Law of Taxation are shown in the attached document).

In the current legal system, complete self-enforcement is not recognized, and in the end the assistance of the court must be sought. This structure means that there are future limits on proceeding with delinquency liquidation. The legal system issues are considered below.

1) The regulations in Article 63 and Article 64 of the General Law of Taxation stipulate that the bank accounts, assets, salary, and other income of delinquent taxpayers can be seized for the amount in arrears, but there are cases where the bank or third party obligor will refuse seizure if the delinquent taxpayer refuses to sign the notification document sent by the tax office.

In this way, forced collection cannot always be carried out, and the legal force of the payment notification (reminder) or its effectiveness are lacking.

In addition, while the regulations in Article 67 and Article 68 of the General Law of Taxation allow certain assets of delinquent taxpayers to be seized by collections officials in the first stage of the application procedures to the court, in practice this is merely provisional seizure, a measure to preserve the assets for later transfer to forced auction once the court enforces the seizure, so the self-enforcement right of the collections officials is incomplete in the original sense.

2) In the regulations in Article 65 of the General Law of Taxation, if there is a conflict with the court on the executive authority regarding seizure of bank account, salary, etc. from delinquent taxpayers, the tax collection procedures are always subordinated to the executive authority of the court, and no priority collection rights are recognized in the relationship with general private creditors, putting them at the same level, which causes tax collection to fall into arrears.

3) If collection is not possible through forced transfers from bank accounts, forced payments from the delinquent taxpayer’s assets, salary or other income, or through the collection of

collateral, then as a final step, an application can be made to the court. However, the standard for a court application is, as a rule, limited to cases when the delinquency amount is at least 30 million tg, so cases which do not reach this level tend to turn into long-term delinquency cases. Moreover, a fair bit of time is needed for processing by the court organizations, and at present these organizations have jurisdiction over nearly 20% of the delinquency balance.

4) The lack of regulations for how late payment notifications can be made and the lack of the expenses needed for posting payment notifications are some of the reasons why the timing for issuing payment notifications depends on the office in charge or other reasons, and can tend towards being arbitrary, with fairness in collection procedures not maintained. (Incidentally, in Japan, the law stipulates that reminder notices be issued within 50 days of the payment deadline, ensuring fairness of procedures.)

5) The regulations in Article 57 of the General Law of Taxation allow for an extension to the payment deadline of 60 days (one time only) from the normal deadline, if the taxpayer applies, but as the interest rates for this grace period are high, it is seldom used in practice. There are no other systems for payment deferment periods.

6) As there are no regulations on the statute of limitations for collection rights (in Japan, collection rights cease to exist five years from the legal payment deadline) or an enforcement cessation system for delinquency processing (the duty to pay ends if enforcement has been halted for three years in a row), then, as noted earlier, there is an accumulation of delinquency cases that have become bad debts such as delinquent taxpayers with absolutely no assets to be seized or who have lost their ability to pay and are unlikely to recover it, even if delinquency processing is carried out.

## **(2) Recommendation for Legal Systems**

For current legal systems, advice was given as shown below, based on “Regarding Delinquency Liquidation Improvement (Legal Aspects).”

Together with this, as a way to help understand the advice, ①the National Tax Collection Law implemented in Japan was fully translated into Mongolian, and ②the National Tax Collection Law-related teaching materials used in the National Tax College in Japan were fully translated into Mongolian.

### **Recommendation**

#### **1) Granting self-enforcement**

In the General Law of Taxation, while there are regulations allowing forced collection from banks and other third party obligors, or from the collateral assets provided by the delinquent taxpayer or salary or other third party obligors, in the end the help of the courts must be obtained in ensuring collection. Thus the self-enforcement right of the collection officials is not

fully recognized.

This means that to ensure proper taxation, a regulation granting taxation officials the right of self-enforcement must be incorporated into the General Law of Taxation.

## 2) Granting taxation priority

According to the General Law of Taxation, tax debt is treated the same as for general civil creditors, and priority in taxation claims is not recognized. In Japan, as a rule, all taxes and public dues are given priority over other debts for the taxpayer's entire assets, and in addition, there is a regulation that if priority has been set for general creditors for mortgages, pledges, etc., then the priority is determined by which comes first, the date of such setting or the legal payment deadline. In addition, if there is a conflict between seizure and the executive authority of the court, there is a law to coordinate this. In Mongolia too, taxation priority needs to be introduced, while working to coordinate with other private debts.

[Explanations were given for specific details for the theoretical basis for taxation priority and Japan's taxation priority system, and the taxation priority systems of foreign countries such as in Western Europe were introduced.]

## 3) Introduction of a deferment system

The only alleviation measure for taxation is a single extension of 60 days from the payment deadline, and even if this extension is exceeded, they are left untouched, without any legal measures taken.

If payment cannot be made due to insufficient funds caused by a disaster or illness or so on, or if tax funds are insufficient due to retroactive taxation over several years as the result of an audit, or if there is a desire to pay but even converting all the assets of the delinquent taxpayer will not cover the amount, then a system to allow deferment needs to be established.

[The content of the current text, etc. of deferment systems in Japan was introduced.]

## 4) Introduction of a secondary tax liability system

In recent hard-to-process cases, there is an increasing number of cases where taxpayers have tried to avoid delinquency processing, involving concealment of assets or transfer of assets to parties related to the delinquent taxpayer, or transfer of assets for free or minimal costs.

A system needs to be created that will allow specific third parties who meet specific requirements to be forced to bear the tax liabilities on a supplementary basis if they have received assets of the delinquent taxpayer for free, if it is determined that the arrears that should be collected are still insufficient even when processing delinquency for the delinquent taxpayer's assets.

## 5) Advance demand, advance restraining foreclosure

According to the General Law of Taxation, if collection is not expected by the payment deadline (10 days from the date the notification arrives), there is a regulation (Paragraph 2,

Article 54) to shorten the deadline, but cases are also seen where collection cannot be made due to the delinquent corporation going bankrupt or the delinquent person leaving the country.

Therefore, if collection cannot be made by waiting until the deadline due to the situation with the taxpayer's resources, then it will be necessary to ensure collection by removing the benefits of the taxpayer's deadline. In addition, if there is the risk that the taxpayer will be spared collection, then an advance restraining foreclosure needs to be created that even before the determination of the tax amount, can be used to determine the amount of expected tax that is expected to be unpaid and to immediately seize the assets of that person to the limit of the amount.

#### 6) Tax liability extinguishment and introduction of an enforcement cessation system

The statute of limitations system for tax liability was abolished when the regulations in Article 13-2 were deleted when the General Tax on Taxation was revised in 1992. The enforcement cessation system functioned as a tax alleviation system under the self-enforcement system, and at the same time, as the management and collection of tax liabilities required a lot of time and effort as long as they existed, it functions as a system to improve collection efficiency with an eye to cost performance. To eliminate the accumulation of delinquency cases that have become bad debts, Mongolia needs a system like this when they bring in the self-enforcement system.

### **(3) Recommendation for preparing amendments to the General Law of Taxation and deliberations by the State Great Khural.**

GDT started studying amending the General Law of Taxation following the advice on legal systems discussed in 5.3.4 (2) recommendation for legal systems above. It then created an amended General Law of Taxation and submitted it to the Ministry of Finance via the Tax Administration and Cooperation Department. While leaving the existing regulations regarding seizure from bank accounts and salary, etc., the amendments included regulations regarding the seizing assets of delinquent taxpayers by the tax authorities themselves and selling them publicly, and after enforcement of the law, the tax organizations will themselves be able to seize assets, convert them and distribute them without having to rely on the courts to collect delinquent taxes.

Later, in February 2016, the amendments to the General Law of Taxation were tabled in the State Great Khural and deliberations started, but as of June 2016, the amendments remain tabled as the general election approaches, and the deliberations have not been completed.

#### **Recommendation**

In terms of creating amendments to the General Law of Taxation, we advised on the amendments requests draft for the General Law of Taxation in February 2015, and advised on

the opinions regarding the amendment to the General Law of Taxation that included self-enforcement again in August 2015.

Additionally, a road map covering the intra-agency communications, regulations revisions work, official training, publicity, and so on for when the amended law is passed and enforced was created and submitted.

## Attached Document

### Major Regulations and Commissioner Notifications for Collection Procedures in the General Law of Taxation

(Chapter 8, Articles 61 to 70 of the General Law of Taxation)

- Article 61: Definition of delinquent tax
- Article 62: Order of delinquent tax collection
- Article 63: Procedures for forced withdrawal of delinquent tax from bank accounts
- Articles 64, 65: Collection from the assets, salary, etc. of the tax delinquent and procedures for these.
- Article 66: Procedures for the public sale of tax delinquent' property
- Articles 67, 68: Sequestration and procedures for sequestration
- Article 69: Procedures for holding as collateral and selling, sequestering, and prohibitions on holding as collateral.
- Article 70: Filing court claims

Note that other text particularly related to the collections procedures includes regulations on the preparation and sending of documents in Article 33 and the sending of tax notifications in Article 54.

### Major operation notifications and regulations

(GTA Commissioner Notification No. 220 of October 28, 2008)

- (1) Procedures for collection from taxpayer assets, salary, or other income
- (2) Procedures for public sale of property
- (3) Procedures for situation examination (search)
- (4) Procedures for sequestering property (in essence, provisional seizure)
- (5) Filing court claims (auction petition)

(GTA Commissioner Directive No. 154 of May 12, 2009)

- (1) Procedures for creating and sending payment notifications (reminders)
- (2) Procedures for forced withdrawals from bank accounts

### **5.3.5 Issues Related to Installation of the Tax Debt Call Center**

#### **(1) Outline of the Installation Plan and Related Advice**

In April 2014, nine persons, including the Director of the former GDT Tax Collection Administration and Methodology Department, visited the Central Tax Debt Call Center of the National Tax Agency in Tokyo as part of their training in Japan. There, they were given explanations that covered an overview of tax debt call centers in Japan, the telephone notifications system, and the status of its operations.

The installation plan formulated with reference to this was designed to compress new delinquent persons (number of cases, amount of tax), targeted at delinquency cases following the payment deadline, notifying them of the amount under the jurisdiction of the capital area office, etc. This work was done by an eight-officials team.

#### **Advice**

##### **1) Regarding preparing an environment to increase the effectiveness of notifications**

In September 2014, a Project Team was assembled in order to introduce a Tax Debt Call Center within the GDT. After exchanging opinions, we expressed their opinions regarding the flowchart for the notifications system created by the Mongolian side, and discussed it further. In addition, Japanese experts also provided written advice on preparing an environment to increase the effectiveness of notifications: the necessity of organizational regulations for the Call Center, methods to send tax notifications and the fact that the notification call targets should include those who have just received the written notice, the jurisdiction period for Call Center cases, expansion of the target tax office's scope, tax amounts targeted for notifications, and so on.

##### **2) Regarding system functional requirements**

Written advice was provided regarding the various functions installed in systems in Japan.

##### **3) Regarding the format of notification documents, etc.**

Information was provided on the current state of call centers in Japan, and in addition, formats for the notification documents and payment plan documents that are sent out by the system were obtained from the NTA and provided.

#### **(2) Advice Related to the Steps until the Start of Operation, Including the Procurement of Equipment and the System Development Status.**

In September 2015, the successful bidder was determined through specified competitive bidding, and system development began, with the goal of completion by December that year. In addition, computers, servers, and peripherals were purchased.

The Tax Debt Call Center was initially scheduled to be established in the Tax Collection Administration and Methodology Department and 1 chief official, 7 officials would be put in position.

But a restructuring in January 2016 (the merger of the GDT and Customs) meant that it was to be established in the Call Center as an external bureau of the Taxpayer Support Department of the General Authority of Customs and Taxation of Mongolia, and trial operation started March 2016.

#### **Advice**

##### 1) Regarding the provision of materials such as bid specifications

We provided materials related to preparing for bids, such as explanations of implementing bidding, determining the winner, purchasing equipment, system development, and the functions required for the system, as well as the specifications (draft) required for bidding.

##### 2) Regarding the training for staff

Training was carried out twice, in December 2015 and March 2016, in preparation for Tax Debt Call Center operation, covering areas such as the outline of telephone notification centers in Japan and the attitudes required for carrying out notification work.

### **(3) The Current Situation for Notification Work and Advice Related to This**

#### 1) Notification methods, targets, and advice on these

A. Current notification methods use the TAXACT (calculation balance Excel) program, based on the tax declaration data that has been provided from the Risk Management department and are done using manual telephone notification, rather than the automated telephone notification system (hereafter, “notification system”) that was initially scheduled.

B. Targets for notification are delinquent corporations (mainly those who have not paid (taxpayers who have submitted declarations but not paid their tax by the legally stipulated deadline)), and the taxation items are mainly corporate income tax and added-value tax, while the target amounts are those up to 3,000,000 tugrik (tg) (5,000,000 in some cases).

C. The agencies targeted for notification work are, starting with the Sukhbaatar District Tax Office from late March 2016, expanding to the Songino Khaikhan District Tax Office, Khan-Uul District Tax Office and Bayanzurkh District Tax Office from May 2016, followed in June by the Bayangol District Tax Office and the Chingeltei District Tax Office, and then the Khovd Province Tax Office, gradually expanding the scope of tax offices.

D. The staff will be made up of one supervisor (chief official) and seven officials, who are operators. In addition to routine notification tasks, all operation staff shall collect data and prepare an aggregate of notification results every Friday.



## **Recommendation**

### 1) Regarding the early operation of the notification system

The notification system includes an automatic calling function, notification target extraction function, notification results aggregation function, negotiation records management function, and a data processing function. Using this notification system allows the amount of work for calling work, data extraction, negotiation results entry, results aggregation, and other tasks to be greatly reduced, allowing efficient notification work.

Therefore, we advised that the notification system should be put into operation at an early stage in order to carry out notification work as efficiently as possible.

### 2) Regarding the inclusion of those who have received a payment notice in notification targets

To make notifications as effective as possible, we advised the Tax Debt Call Center that it was important to link its operations with payment notices (demands) and make those who have just received a payment notice (demand) targets for notification. In response to this, the payment notice issuing system that uses the CPO has begun its operation for newly-arising delinquency cases, and we advised that if this system operates smoothly and the issuing of payment notices is unified and standardized in the future, then studies should be made on providing notifications focused on cases where payment notices have been issued.

## **(2) Implementation Status of Notifications and Recommendation for Improvements**

The implementation status of notifications carried out in the three-month period from March 30 to June 30, 2016, is as shown on the attached document.

The results show that in notifications for the amounts under the jurisdiction of the Sukhbaatar District Tax Office, the ratio for which payment has been confirmed or payment pledges have been made is around 38%, if past fiscal year delinquencies are included. However, it is a bit over 42% if only this fiscal year's delinquencies are included, making the ratio about 5 percentage points higher. In addition, looking at the amount for all tax offices that have sent out notifications, more than half of the cases lack accurate data or responses, so it was not possible to contact them.

## **Recommendation**

### 1) Regarding those targeted for notifications

After operation starts, as a trial, those targeted for notification were to be divided into three groups (those who were delinquent for past fiscal years only, those who were delinquent for the current fiscal year only, and those who were delinquent for both past and current fiscal years), but as the results clearly show, those who were delinquent for past fiscal years only are used to being delinquent, having little awareness to begin with about paying tax, and so the effects of notifications are limited. In addition, telephone notifications are already being carried out at

certain specific tax offices, so it is believed that they should not be targeted for notifications.

In addition, the telephone notifications for non-paying taxpayers before sending payment notices (demands) that are currently done have some issues in terms of notifications for delinquency arrangement, but are considered to have merit in the sense of preventing delinquency from arising. In this event, it is considered effective to start with larger amounts rather than smaller, and narrow the number of cases down in order.

Moreover, if notifications are made to taxpayers who are unpaid for small amounts before the payment notices (demands) are sent, it is considered effective to concentrate them in terms of timing, such as every three months, and send them out all at once, in order to deal with the number of cases.

In this way, regarding the selection of targets for notifications, we advised that it was necessary to determine comprehensively which tax items and which delinquent taxpayers were to be targeted for notifications, from the perspective of increasing the collection rate, notification effectiveness, and the processing capacity of operators (at present, the number of cases daily for an operator is 44 to 60, so seven can do about 800 to 900 in a month).

#### 2) Regarding the situation with current work

About three months have passed after operation started, some operators complained of health issues and that the work was not appropriate. There appears to be some minor grounds for concern with OP health.

This is believed to be caused by the specialized nature of the notification work, and by being so busy, so we advised that attention be paid to health management, such as ample break times, ensuring appropriate times to get refreshed, rotating notification work shifts on a half-day basis, and so on, and that it was necessary to foster a work environment where stress does not accumulate (increasing the number of OPs (hiring part-timers) in future will be studied as well).

#### 3) Regarding processing returned cases

Cases where the data is not accurate account for nearly 50% of notification targets if non-responses are included. These waste time and effort for notification and are a major factor in reducing the effectiveness of notifications. We advised that these be returned to the agency with jurisdiction early, that TRIPS (Total Revenue Integrated Processing System: a system for correcting data and managing taxpayers), which can make corrections more promptly than previously, be used, and that it is important to correct information both promptly and accurately.

#### 4) Regarding responses to phone calls

The work of receiving calls at present is done by operators who are free at the time the call arrives, rather than having a specific person in charge of such. However, it takes time and effort to respond to these calls, and in addition it interrupts notification work, leading to reduced work efficiency. We advised that in future, along with utilizing the notifications system, it was

necessary to study assigning a person to be responsible for receiving calls in terms of work efficiency and operators health management, or that rotation shifts be employed.

**Attached Document**

Implementation Status of Notifications

1. Among delinquent corporate taxpayers in the Sukhbaatar District Tax Office’s jurisdiction, 4,967 cases (4,565,000,000 tg) were chosen as targets, divided into those who were delinquent for past fiscal years only, those who were delinquent for the current fiscal year only, and those who were delinquent for both past and current fiscal years (termed “dual delinquents”), and notifications were sent. The results of these notifications are shown in the table below.

(Units: cases, %)

Category	Total No. of Notifications	Payment Confirmed		Payment Pledges		Returned to Tax Office			
		Cases	Ratio to whole	Cases	Ratio to whole	Inaccurate	Ratio to whole	No response	Ratio to whole
Past years	346	76	22.0	58	16.8	109	31.5	103	29.7
Current year	71	21	29.6	9	12.7	37	52.1	4	5.6
Dual delinquents	3,854	737	19.1	727	18.9	499	12.9	1,891	49.1

NB: The number of cases are the number of notification cases as of June 20th.

2. Starting in May 2016, notifications were sent to those in Bayanzurkh District Tax Office jurisdiction who had not paid tax or who were in arrears, and in the same manner, notifications were sent to those who had not paid tax or who were in arrears in the jurisdictions of the Songino Khairkhan District Tax Office, the Khan-Uul District Tax Office, the Bayangol District Tax Office and the Chingeltei District Tax Office, and the Khovd Province Tax Office. The results of these notifications are shown in the table below.

(Units: cases, %)

Tax Office	Total No. of Notifications	Payment Confirmed		Payment Pledges		Returned to Tax Office					
		Cases	Ratio to whole	Cases	Ratio to whole	Inaccurate	Ratio to whole	No response	Ratio to whole	Problematic	Ratio to whole
Bayanzurkh	1,138	459	40.3	291	25.6	155	13.6	140	12.3	93	8.2
Songino	820	326	39.8	166	20.2	89	10.9	147	17.9	92	11.2
Khan-Uul	973	273	28.1	199	20.5	105	10.8	247	25.3	149	15.3
Bayangol	1,230	281	22.9	317	25.8	184	14.9	288	23.4	160	13.0
Khovd	193	13	6.7	39	20.2	62	32.0	56	29.0	23	11.9
Chingeltei	185	55	29.7	43	23.3	17	9.2	48	25.9	22	11.9

NB: The number of cases are the number of notification cases as of June 20th.

## Annex

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





# Work Flowchart



# JICA Expert Dispatch Track Record



## Record of Trainings

## International Taxation

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

Period: Feb 16 to Mar 1, 2014

Date	Day	Morning (9:30-12:30)	Afternoon (13:30-16:30)
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

<b>№</b>	<b>Name</b>	<b>Position</b>
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 methodology 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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**6. Topical training on the advanced international taxation by NTA tailored to specific subjects requested by GDT**

Period: Feb 16 to Feb 27, 2015

<b>Date</b>	<b>day</b>	<b>Mornings (9:30-12:30)</b>	<b>Afternoons (13:30-16:30)</b>
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**

<b>№</b>	<b>Name</b>	<b>Department/Position</b>
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

<b>№</b>	<b>Name</b>	<b>Department/Position</b>
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	Khataimbaatar.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

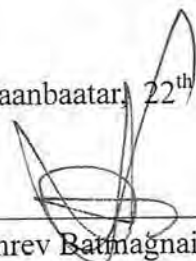
MINUTES OF MEETINGS BETWEEN  
JAPAN INTERNATIONAL COOPERATION AGENCY  
AND  
THE GENERAL DEPARTMENT OF TAXATION OF MONGOLIA  
AT  
THE SECOND JOINT COORDINATING COMMITTEE MEETING  
FOR  
THE PROJECT FOR THE ENHANCING TAX COLLECTION  
OPERATION AND INTERNATIONAL TAX ISSUES OF MONGOLIAN  
TAX ADMINISTRATION


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

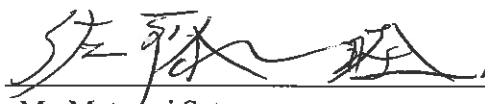


MINUTES OF MEETINGS BETWEEN  
JAPAN INTERNATIONAL COOPERATION AGENCY  
AND  
THE GENERAL DEPARTMENT OF TAXATION OF MONGOLIA  
AT  
THE THIRD JOINT COORDINATING COMMITTEE MEETING  
FOR  
THE PROJECT FOR THE ENHANCING TAX COLLECTION  
OPERATION AND INTERNATIONAL TAX ISSUES OF MONGOLIAN  
TAX ADMINISTRATION

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.

## List of Equipment

## Equipment

The equipment was handed over to GDT for Tax Debt Call Center on December 26, 2014.

No		Quantity
1,2	Server	2
3	Router	2
4	PC	8
5,6	PBX (with headset)	1(8)
7	Switch	1
8	Printer	1
9	Copy Machine	1
10,11,12	Desk, Chair	9 each
13	Cabinet	1
14	Closet	2
15	Hanger	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

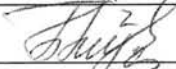
(For "The project for enhance tax collection operation and  
international tax issues of Mongolia tax administration in  
Mongolia")


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

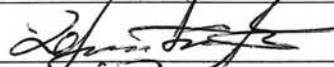
Хүлээн авсан:  
(For the End-User)

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/)

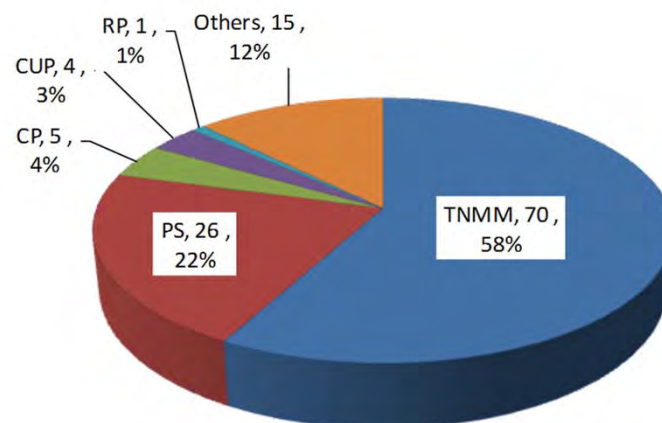
  
Ч. Оюунбаатар /Аж ахуйн ажилтан/  
(Ch.Oyunbaatar /Book keeper/)

# Training Materials



# 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

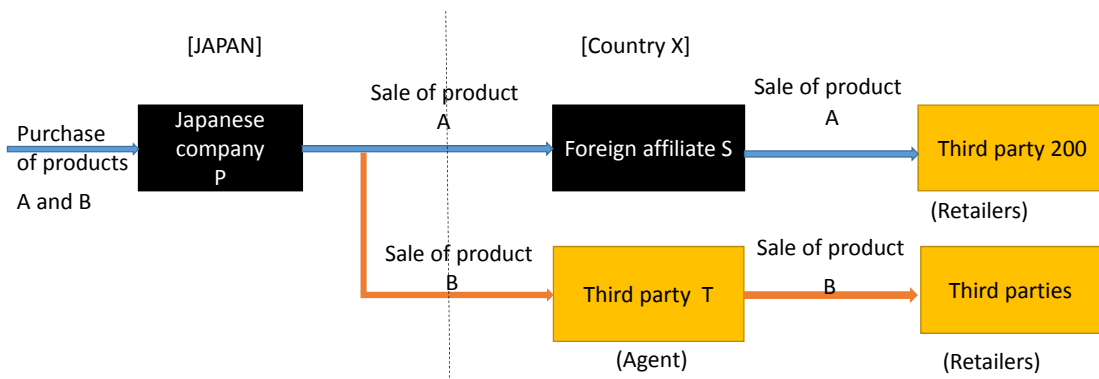
	BY 2011	BY 2011	BY 2012
Number of unrecorded cases	146	182	222
Amount of additional income (Billion yen)	69.8	83.7	97.4

## 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.

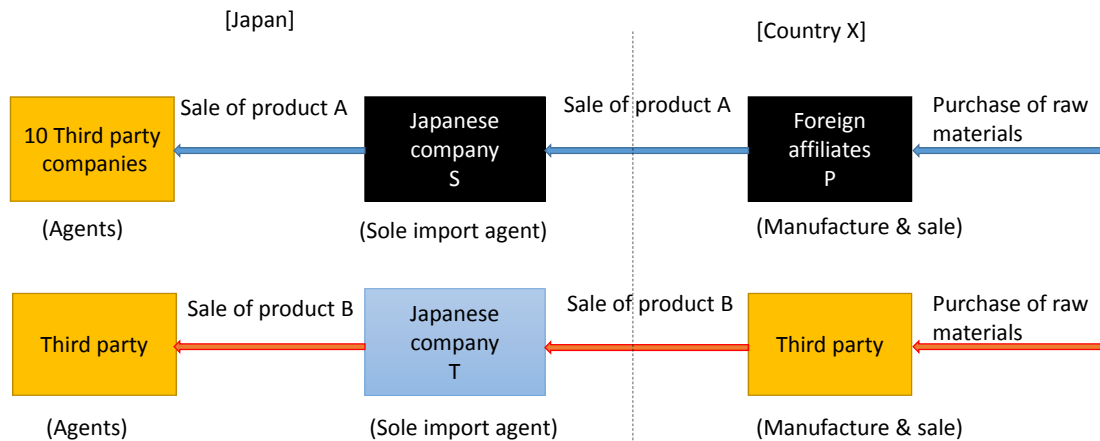
## Selection of TPM

- 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

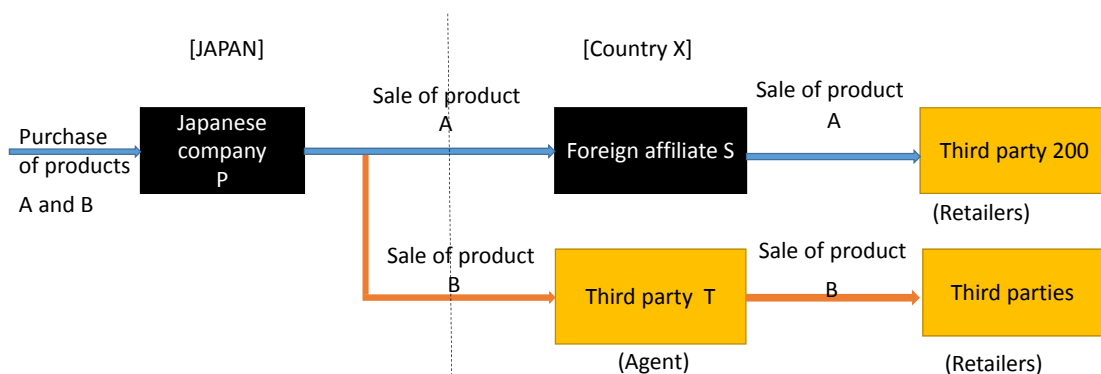
- **Consideration of the applicability of TPM**
- Company S resells to third parties the product A that it purchases.
- It is also found that financial data is obtainable from publicly available information on company T.
- Product B, which is imported from a third party and sold to agents in Japan by 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.

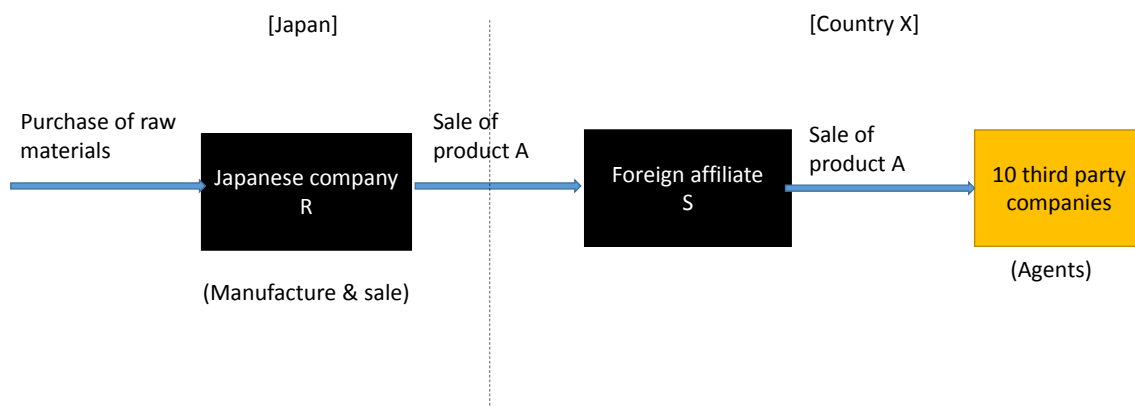


## Selection of TPM

- 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

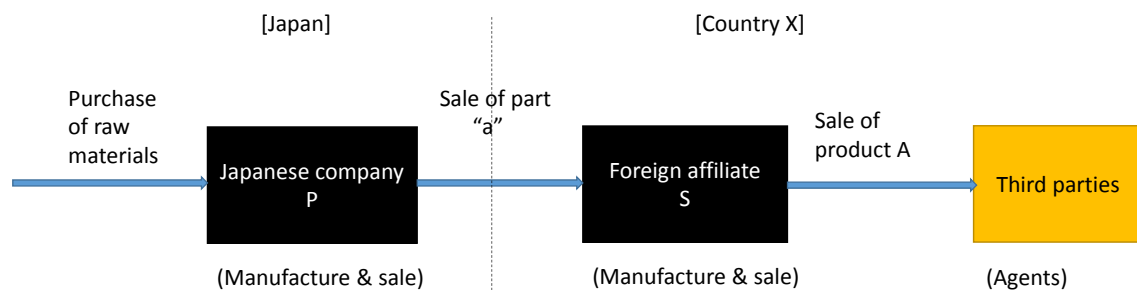
- As it is possible to identify comparable transactions for company S from publicly available information based on the operating margin.

## 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

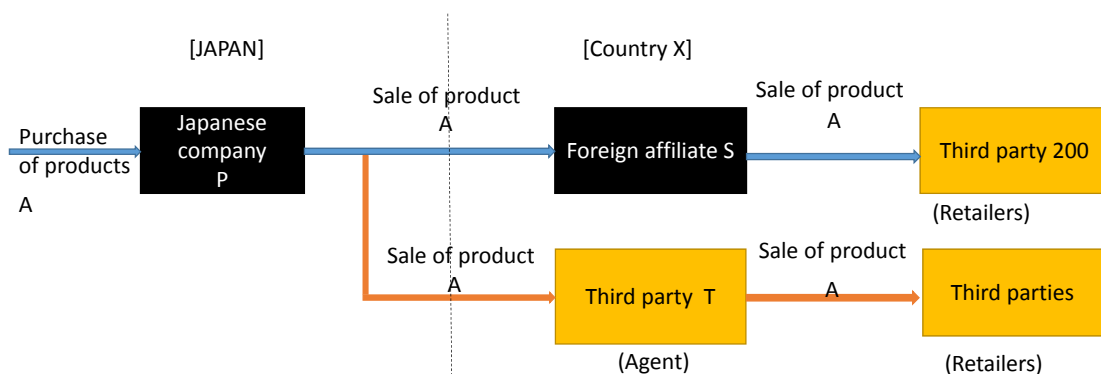
- **Consideration of the applicability of TPM**
- Regarding company P, there is only one corporation manufacturing and selling a product similar to product A in Japan, and the transactions involving it are all controlled transactions. It is therefore not possible to identify comparable transactions.

## 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

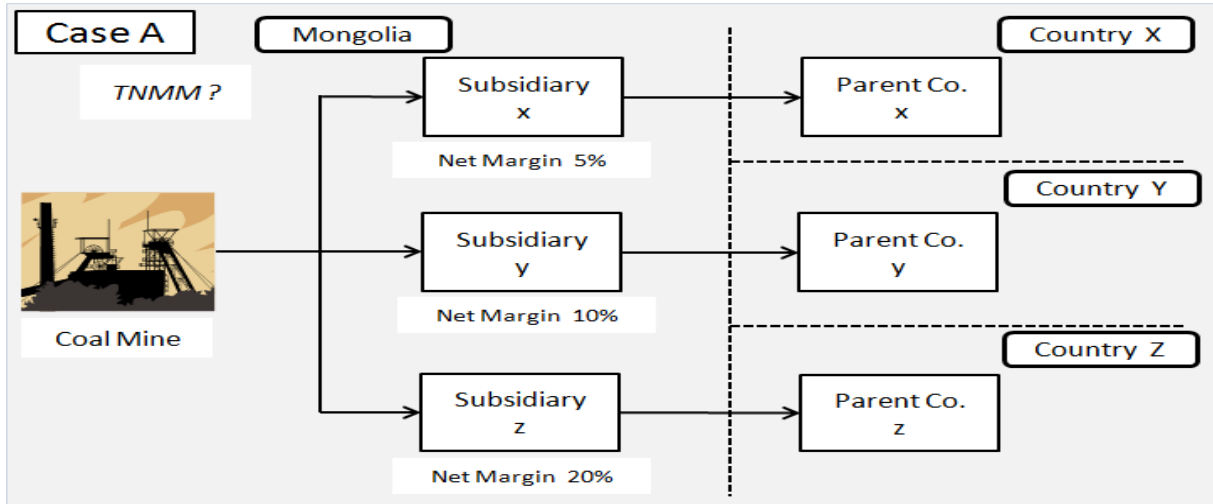
## Transfer pricing solution

- 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.

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

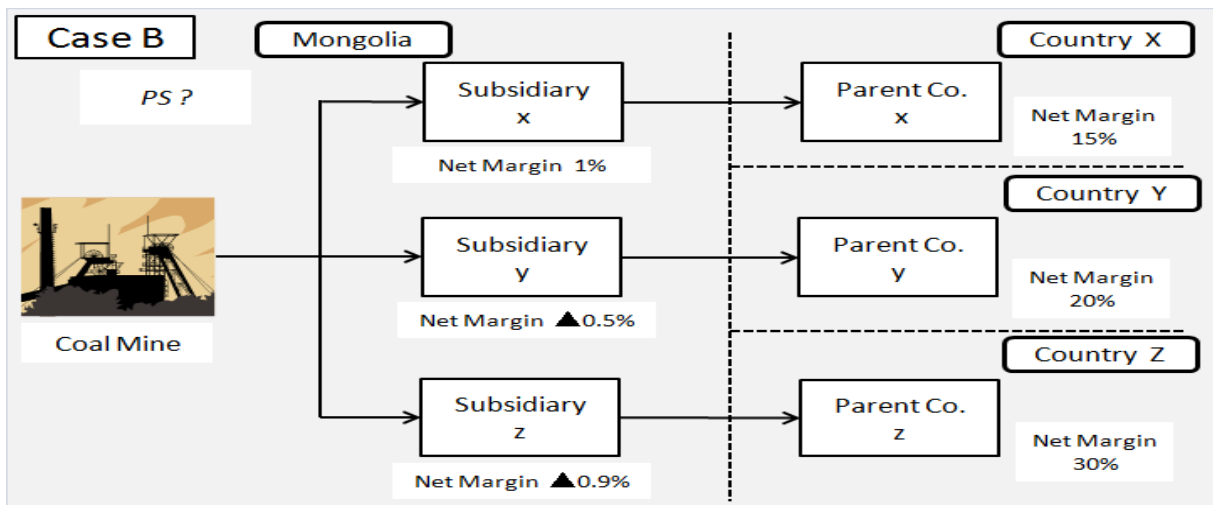


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Case Study and Suggested Administrative Goals on Transfer Pricing

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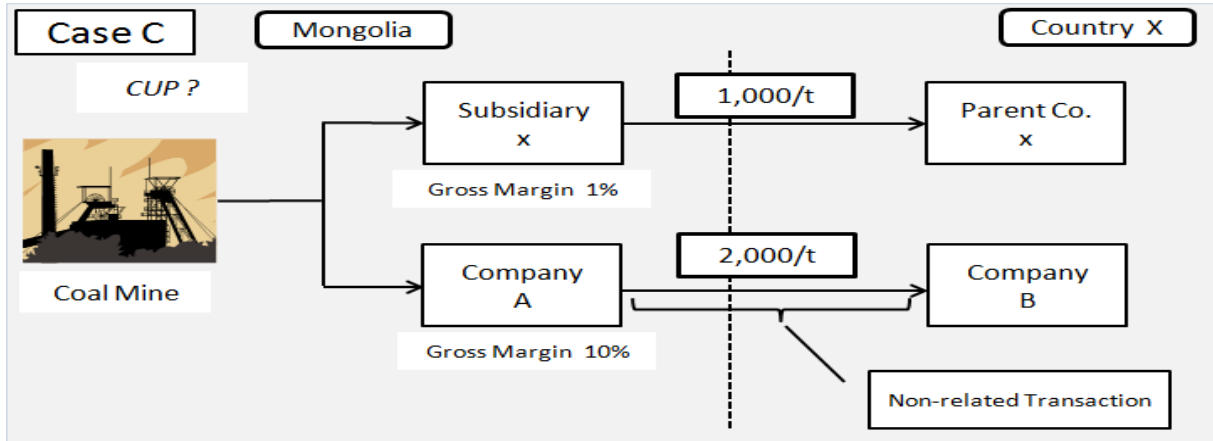


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## 対外国向取引の場合 (鉱業部門) Outbound Case (Mining Sector)

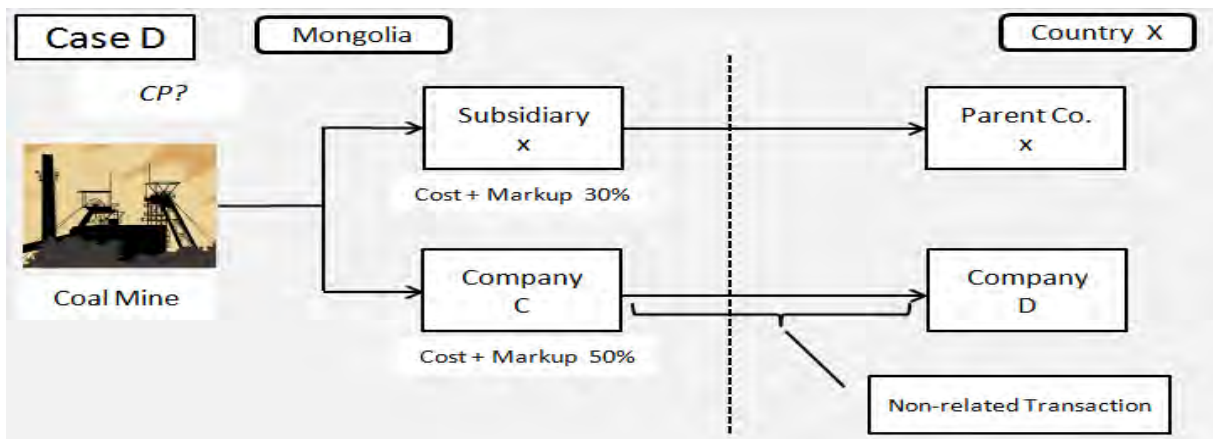


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## 対外国向取引の場合 (鉱業部門) Outbound Case (Mining Sector)



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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)

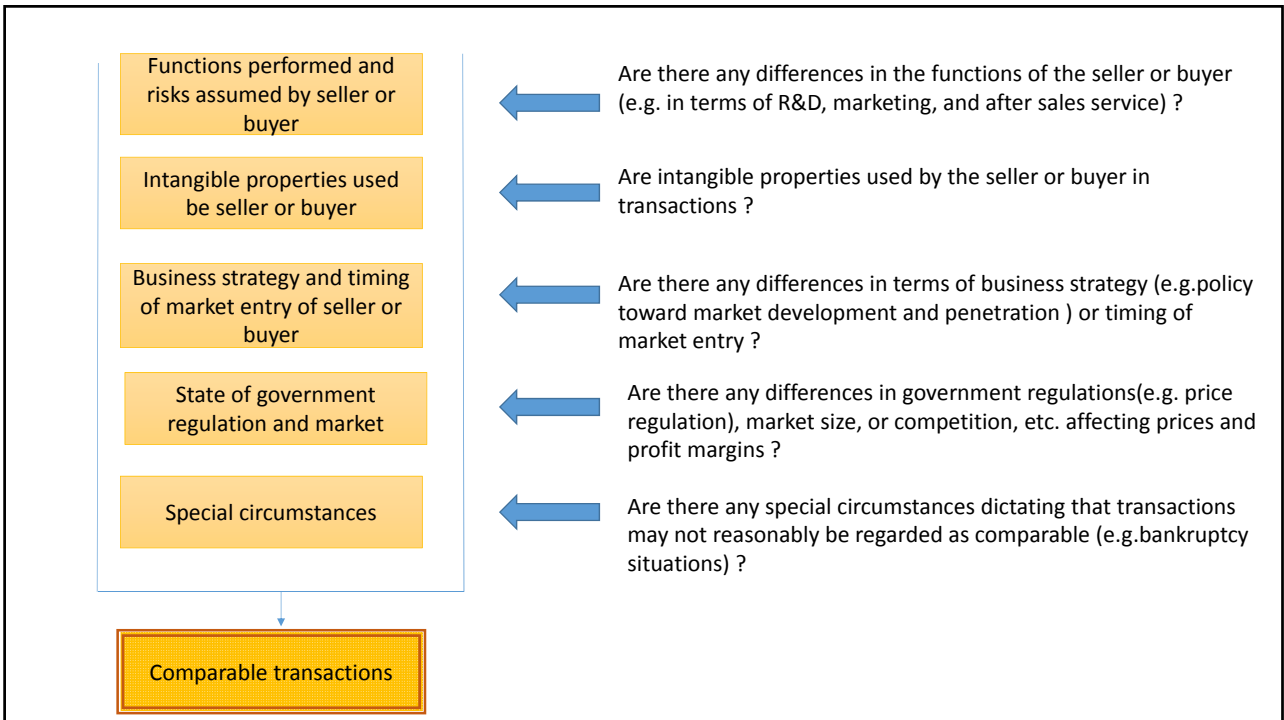
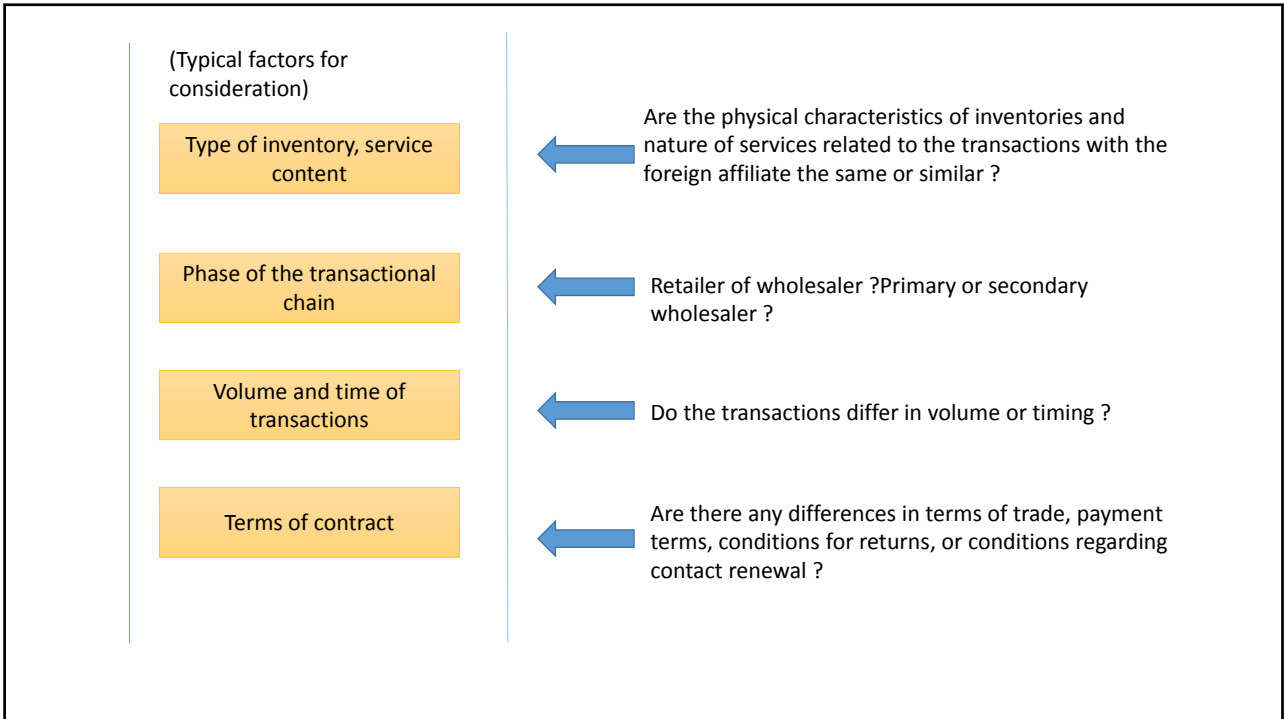
Other information(external information)

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. Koderá has a Permanent Home in Japan. But he constructed new house in UB. Mr. Koderá'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. Koderá 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

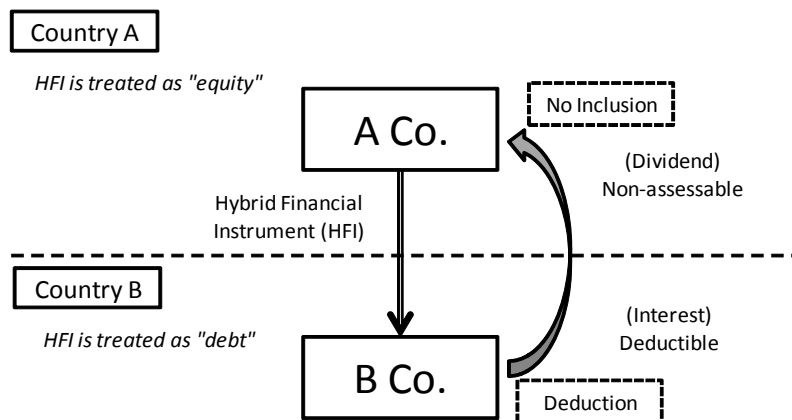
### Definition of Hybrid Mismatch Arrangement

(para.41)

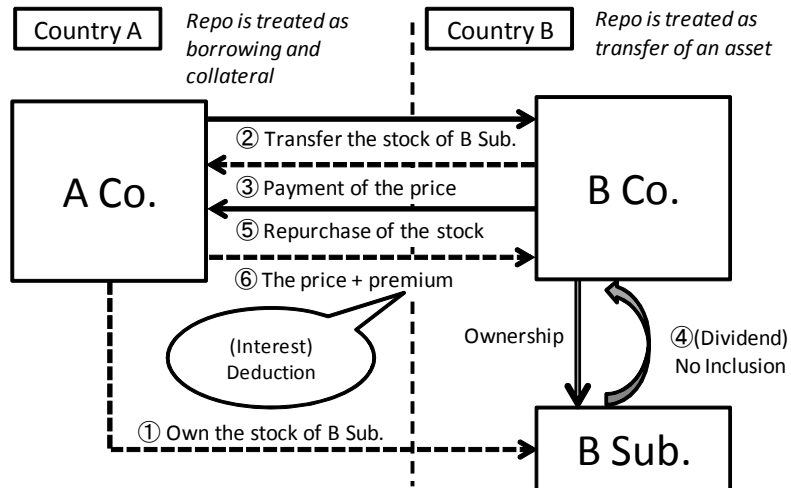
A hybrid mismatch arrangement is an arrangement that **exploits a difference in the tax treatment of an entity or instrument under the laws of two or more tax jurisdictions** to produce a mismatch in tax outcomes where that **mismatch has the effect of lowering the aggregate tax burden of the parties**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

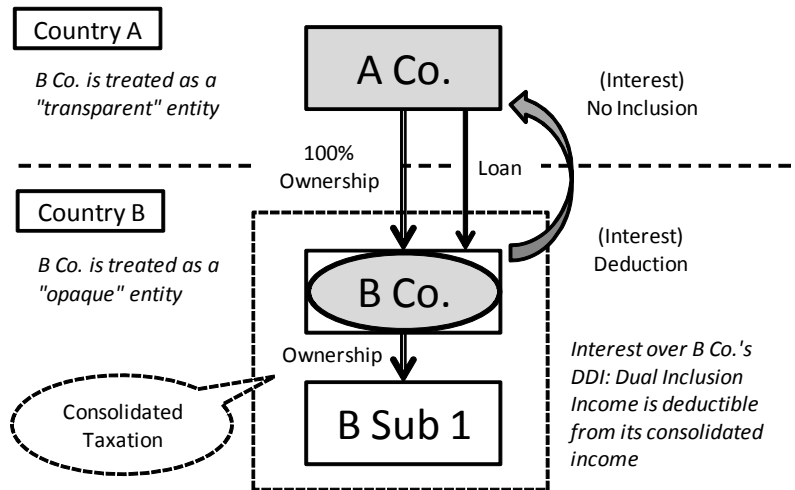
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### 3. Disregarded Payments Made by a Hybrid Entity to a Related Party



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### Recommended Rule

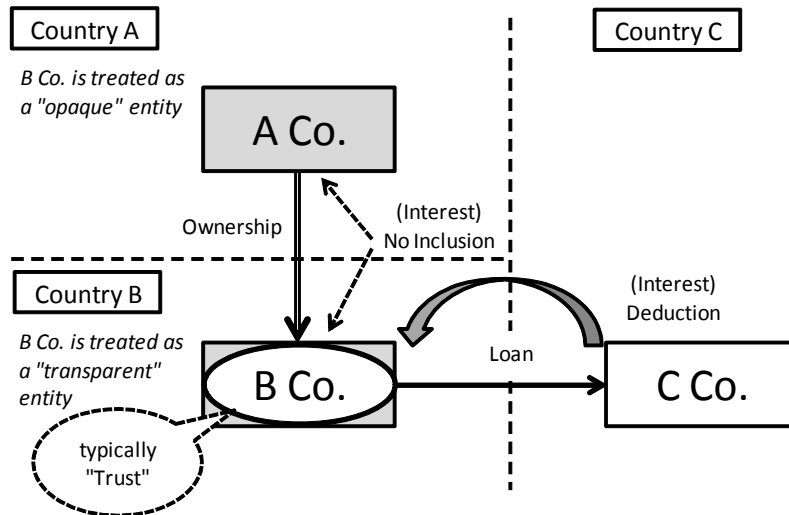
- **Response**
  - ➔ Deny payer deduction
- **Defensive Rule**
  - ➔ Include as ordinary income
- **Scope**
  - ➔ Controlled group and structured arrangements

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## 4. Payment to a Foreign Reverse Hybrid



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## Recommended Rule

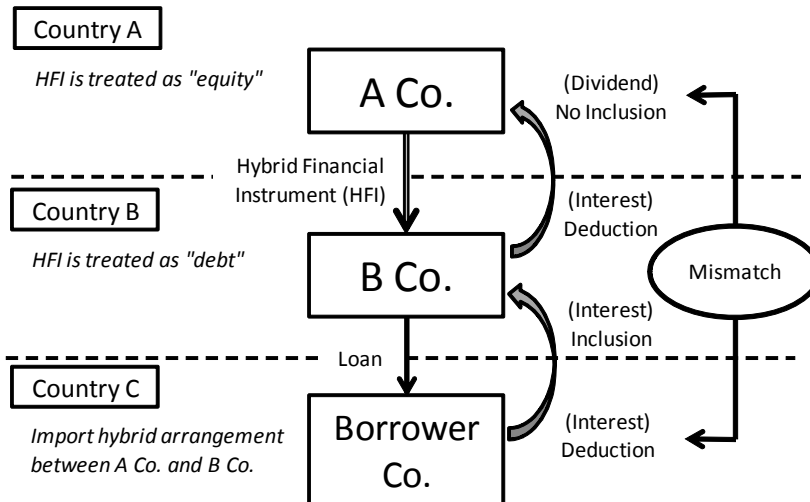
- **Response**
  - ➔ Deny payer deduction
- **Defensive Rule**
  - ➔ None
- **Scope**
  - ➔ Controlled group and structured arrangements

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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

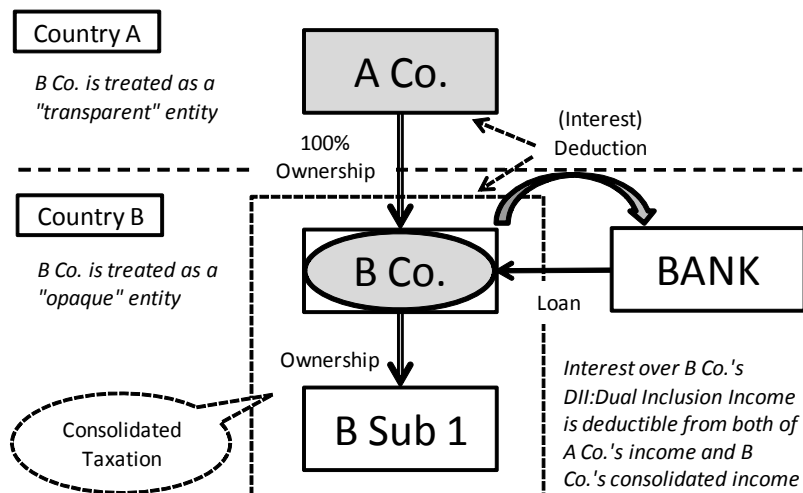
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Hybrid Mismatch Arrangements

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# Cases of "Double Deduction"

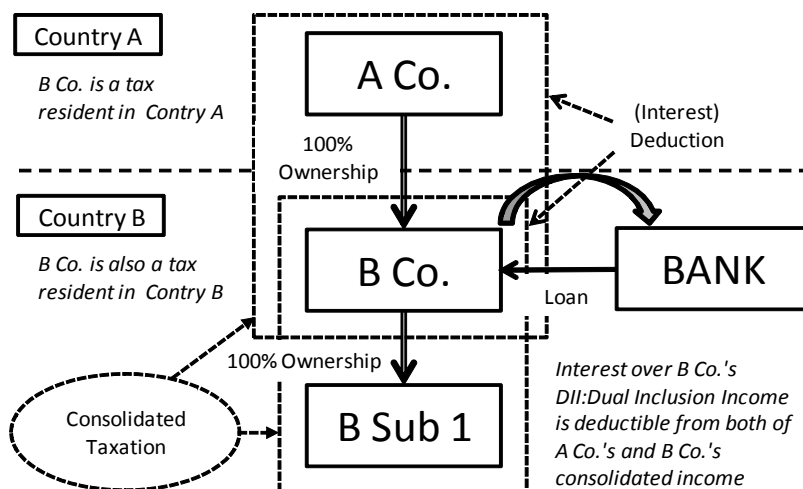
## 6. Basic Double Deduction Structure Using Hybrid Entity



## 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

## 7. Dual Consolidated Companies



## 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)

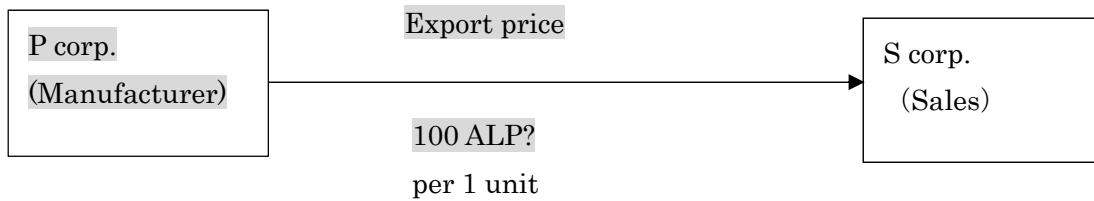
Methods equivalent to methods consistent with CUP, RP, CP

*Methods equivalent to methods consistent with PS, TNMM (Cabinet order 39-12(8)4)*

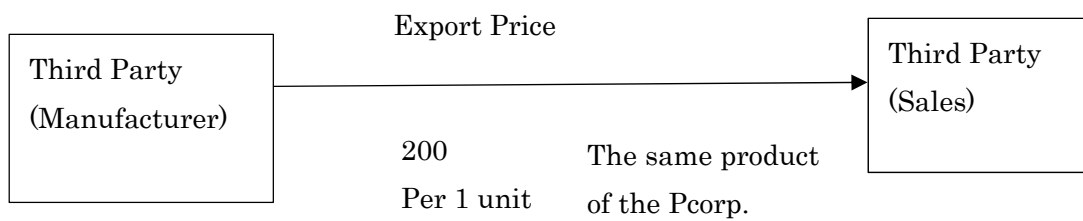
★ Select the most appropriate method in Group C and Group D

## The application formula of Comparable Uncontrolled rice Method (CUP)

### ① Fact finding of Tested Party



### ② Fact finding of Third Party



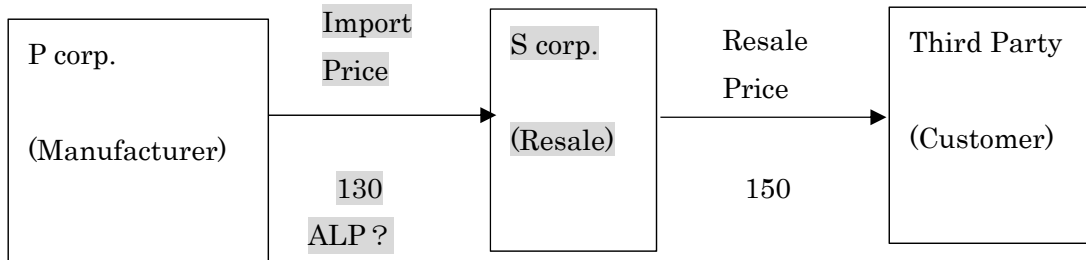
### ③ ALP = Third Party's Export Price

$$= 200$$

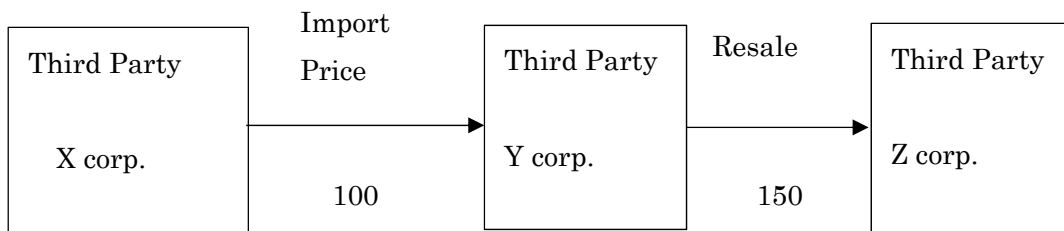
### ④ TP taxation = 200 - 100 = 100

## 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%)

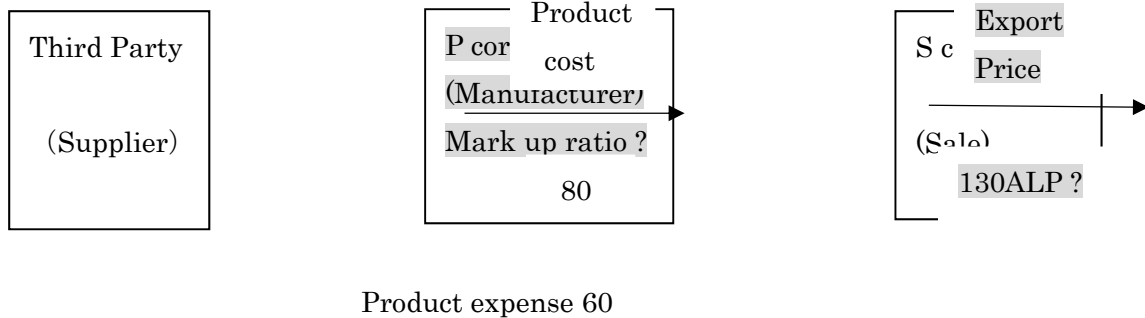
④ Normal Profit in the Tested Party  
= Resale × Normal Profit Ratio(③)  
= 150 × 33.3% = 49.95

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

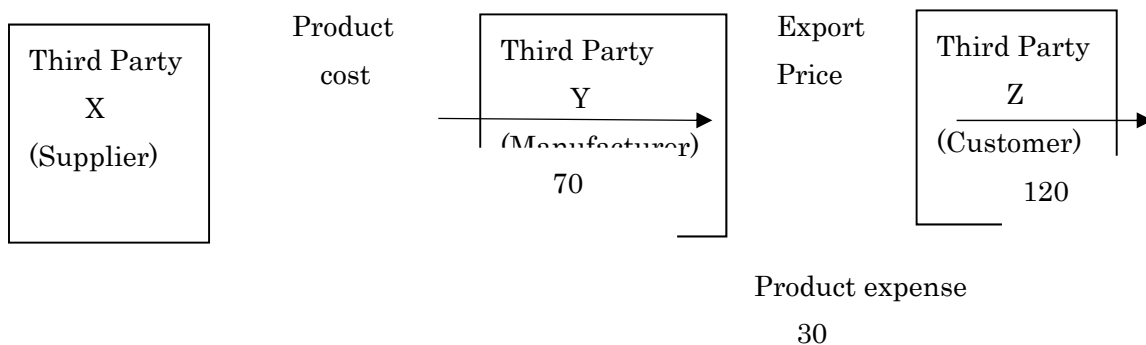
### ① Fact Finding of Tested Party Transaction



$$\text{Total Cost} = \text{Product Cost} + \text{Product Expense}$$

$$= 80 + 60 = 140$$

### 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.)	Operating Margin (S corp.)
80	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.)	Operating Margin (S Corp)
150	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
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**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>
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※ 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>
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※ 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>
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※ 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.

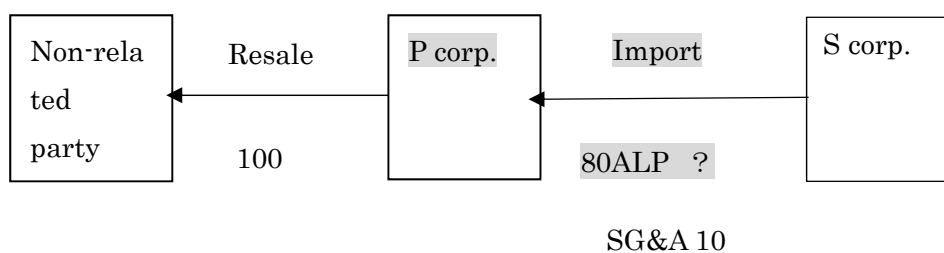
<b>P corp. initial Operating Profit</b> <b>(40)</b>	<b>Pcorp.Increased Operating Profit</b> <b>(25)</b>	<b>S corp.Operating Profit</b> <b>(35)</b>
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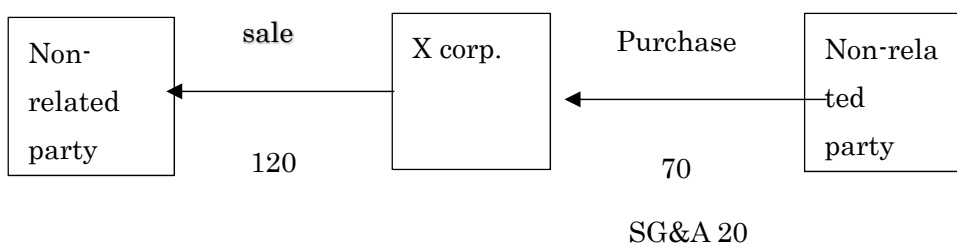
## The application formula of TNMM (Import Case)

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.)

$$= \text{Resale Price of P corp.} - (100 \times 0.25 + 10)$$

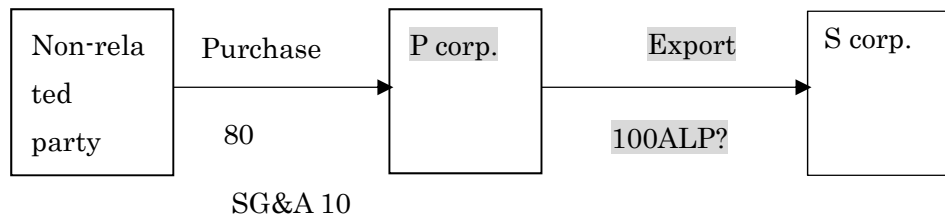
$$= 100 - 35 = 65$$

⑥ TP taxation =  $80 - 65 = 15$

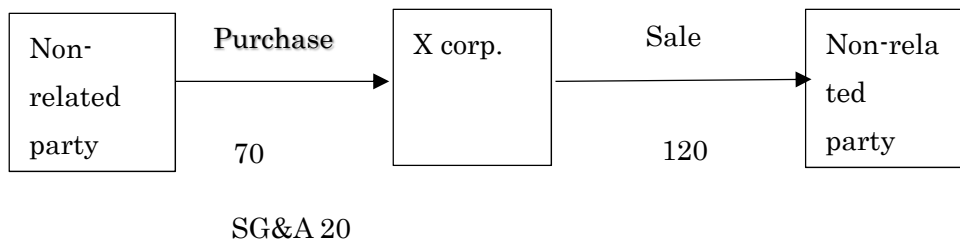
**The application formula of TNMM (EXPORT case)**

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.)**

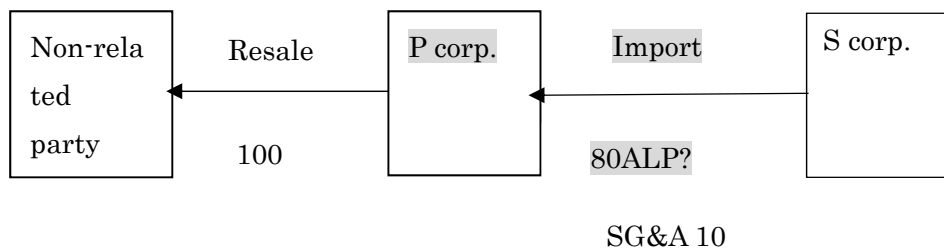
$$= \text{Acquisition Cost} + (80 + 10) \times 0.333 = 109.97$$

⑥ TP taxation = 109.97 - 100 = 10

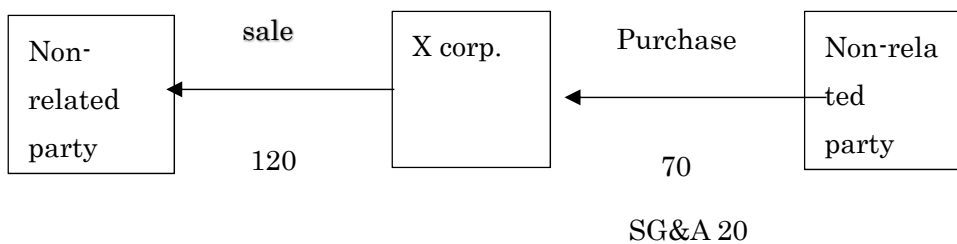
## The application formula of TNMM ( 1 st Berry-ratio method)

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.)

$$= \text{Resale Price of P corp.} - (10 \times 2.5)$$

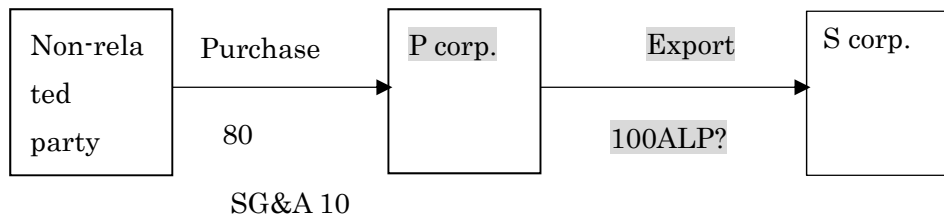
$$= 100 - 25 = 75$$

⑥ TP taxation = 80 - 75 = 5

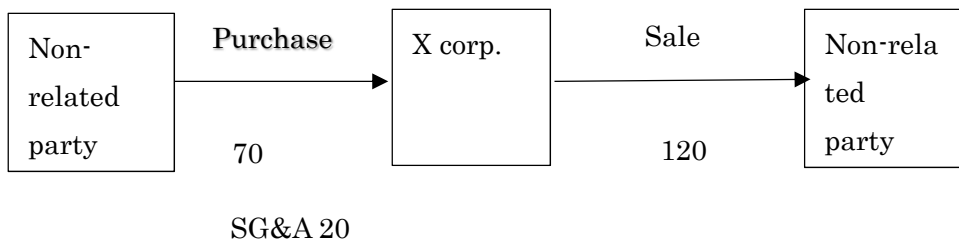
## The application formula of TNMM (2<sup>nd</sup> Berry ratio method)

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

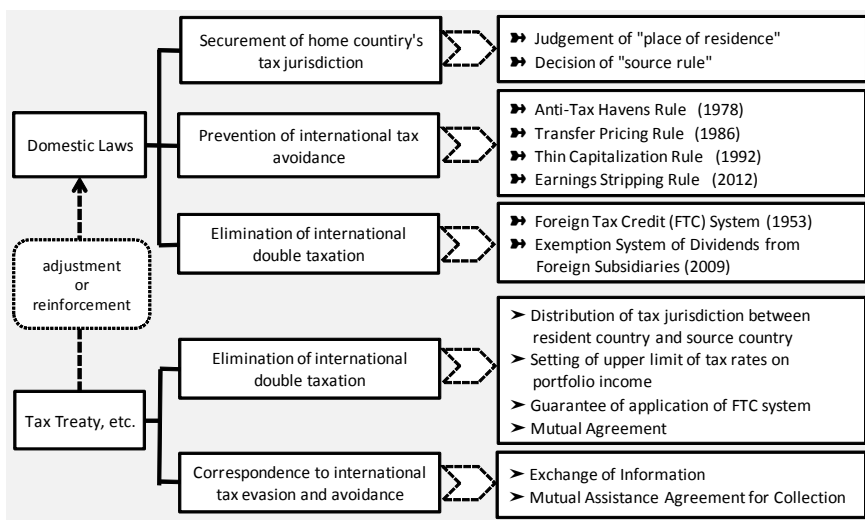
# TOPIC 1

## 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.

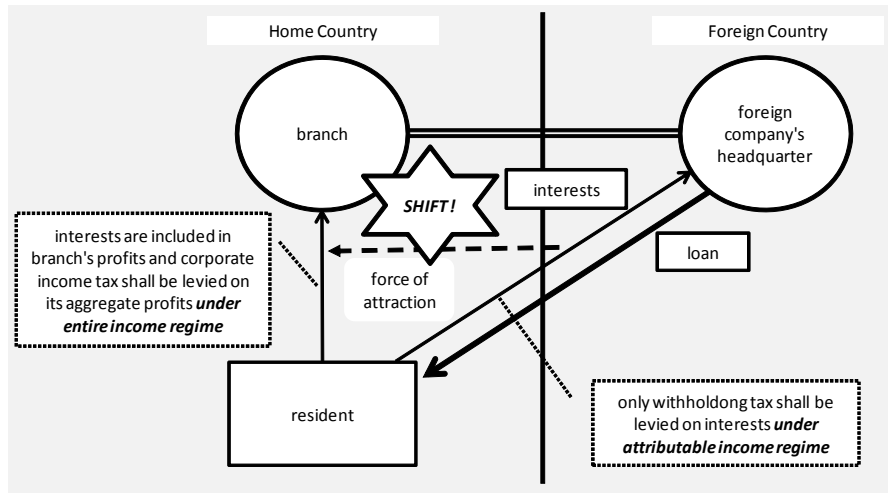
### ■ Attributable Income Principle

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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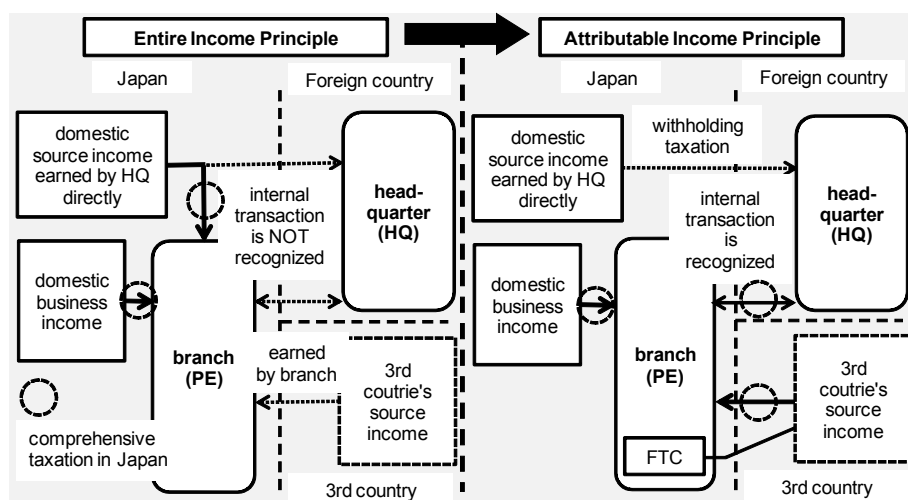


# Profits Attributable to PE

## ■ 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)

attributed to domestic business

portfolio income of foreign corporation's headquarter is deemed to be one from direct investment and taxed in that manner

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**

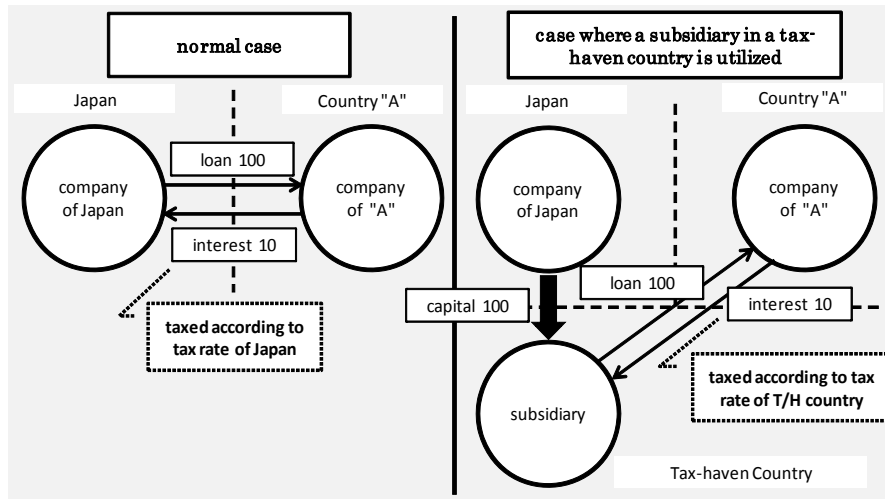
### ■ Problem

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

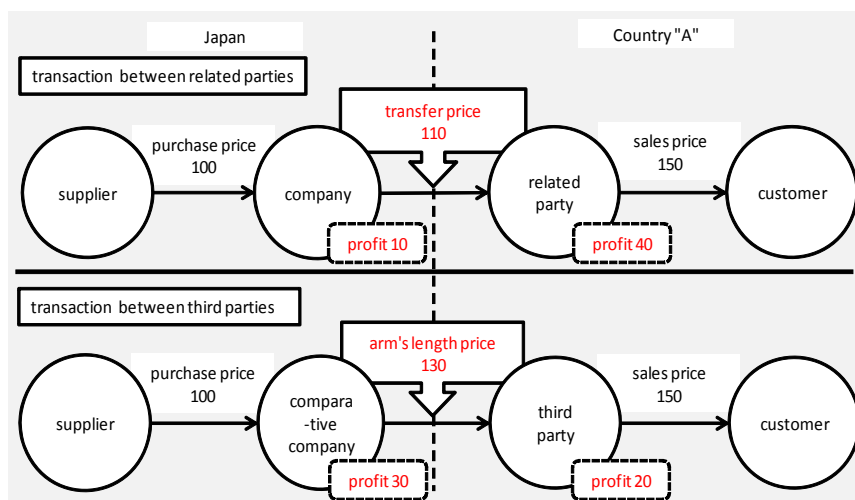
### ■ Problem

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

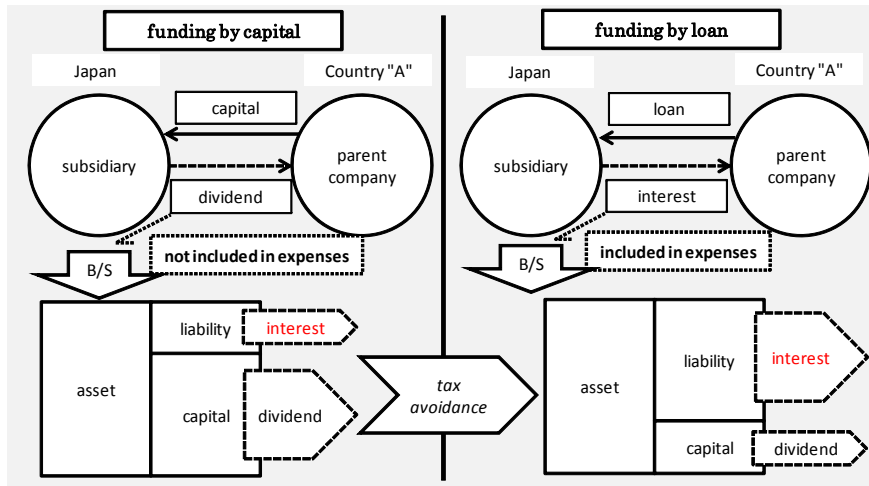
Income of a corporation in our home country shall be calculated and taxed as if its international transaction between its related foreign parties were made at usual transactional price (arms' length price).

## 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

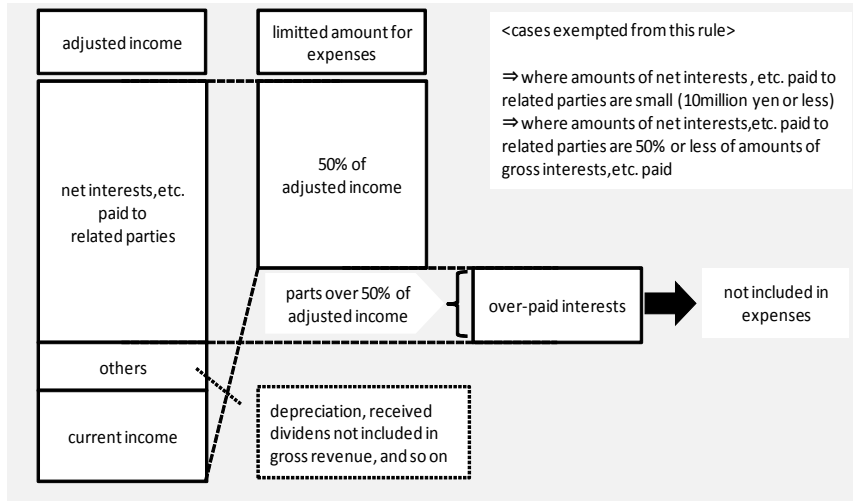
Parts over 50% of the adjusted income of a domestic corporation out of its net interests, etc. paid to its related foreign parties shall not be deductible as expenses for tax purposes.

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# Earnings Stripping Rule



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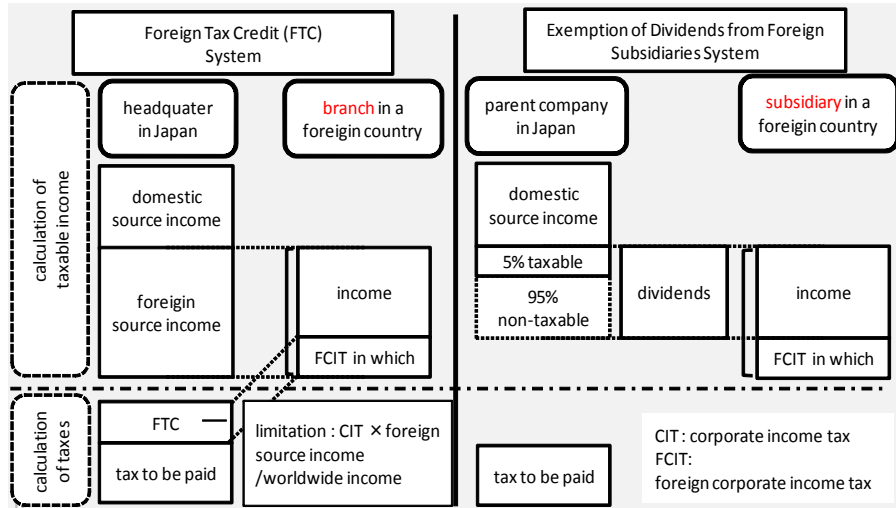
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## TOPIC 4 ELIMINATION OF INTERNATIONAL DOUBLE TAXATION

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## Rules for Prevention of International Double Taxation



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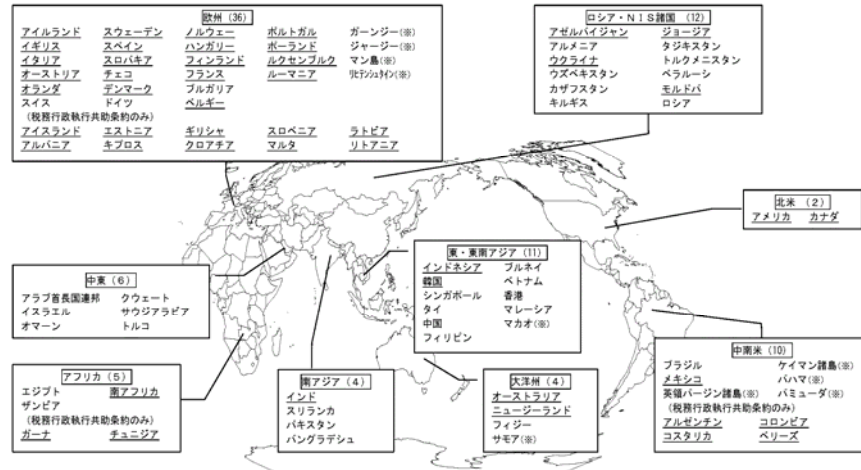
## TOPIC 5 TAX TREATIES OF JAPAN

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Basis of International Taxation

# 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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# 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 ?

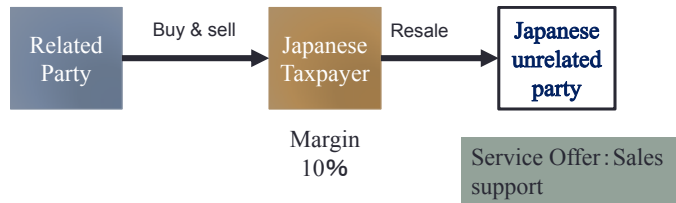
The lawsuit

Tokyo district court •2007, 12.7 (Taxpayer **lost** this case)

Tokyo high court 2008, 10.30 (Taxpayer **won** this case)

## Trade Chart 1

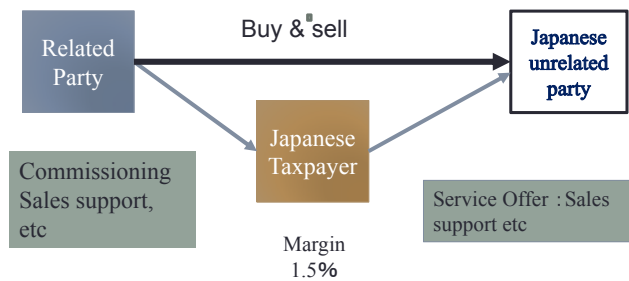
Original trading



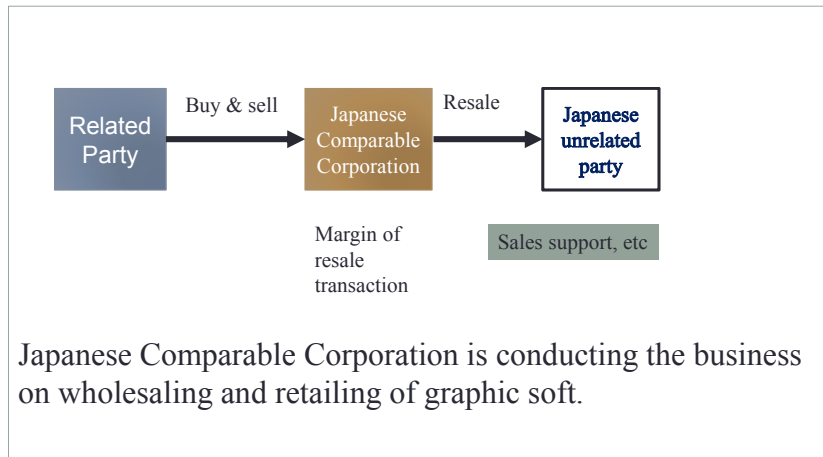
Japanese taxpayer had been originally conducted the resale business in terms of computer software.

## 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 ?

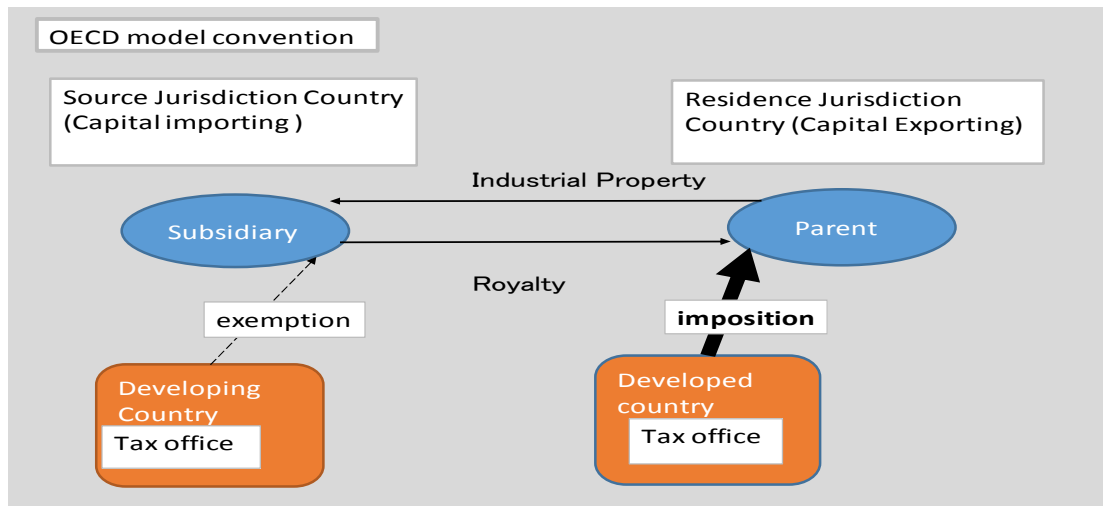
A2 In this principle, tax imposition is conducted at the country where **income** was occurred. The country is called the source jurisdiction.

Q3 What is Residence jurisdiction ?

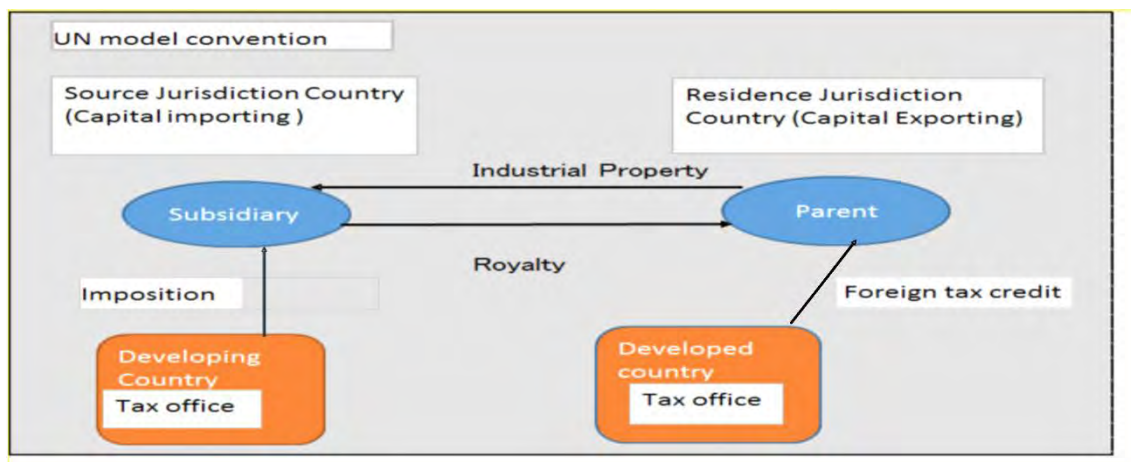
A3 In this principle, tax imposition is conducted at the country where **the person(or company) receiving the income** resides. The country is called the residence country of the income beneficiary.



## ★ *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 collects premiums State or insures risks situated therein thro insures risks ther than 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.)



## Provision Article 11 (Interest)

### ★★Contention: Japan-US treaty “interest” stipulation

★US resident → interest → Japanese resident

- Financial institution, pension receives      Exemption 0%
- Others      : 10%

→ However it is needed to meet the condition of LOB (Limitation On Benefits) in Art. 22 of Japan-US treaty if the taxpayer get the benefits of the tax treaty.

## ★★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