

# Act on Special Measures Concerning Taxation (Limited to the provisions related to nonresidents and foreign corporations)

(Act No. 26 of March 31, 1957)

## Chapter I General Provisions

(Meanings of the Terms)

Article 2 (1) The meanings of the terms listed in the following items as used in Chapter II are as prescribed respectively in those items:

- (i) in Japan or outside Japan: These mean "in Japan" or "outside Japan" as prescribed in Article 2, paragraph (1), item (i) or item (ii) of the Income Tax Act;
- (i)-2 resident or nonresident: These mean a resident or a nonresident as prescribed in Article 2, paragraph (1), item (iii) or item (v) of the Income Tax Act;
- (ii) domestic corporation or foreign corporation: These mean a domestic corporation or a foreign corporation as prescribed in Article 2, paragraph (1), item (vi) or item (vii) of the Income Tax Act, including an association or foundation without juridical personality as prescribed in item (viii) of the paragraph that has its head office or principal office in Japan as prescribed in item (i) or that has its head office or principal office outside Japan as prescribed in the item;
- (iii) nonresident with a permanent establishment in Japan: These mean a nonresident listed in Article 164, paragraph (1), items (i) through (iii) of the Income Tax Act;
- (iv) foreign corporation with a permanent establishment in Japan: These mean a foreign corporation listed in Article 141, items (i) through (iii) of the Corporation Tax Act;
- (v) trust subject to corporation taxation, government or company bonds, deposits or savings, jointly managed money trust, loan trust, investment trust, securities investment trust, bond investment trust, bond management investment trust, public and corporate bond investment trust, special purpose trust, specified trust that issues beneficiary certificates, or securities: These respectively mean a trust subject to corporation taxation, government or company bonds, deposits or savings, jointly managed money trust, loan trust, investment trust, securities investment trust, bond investment trust, bond management investment trust, public and corporate bond investment trust, special purpose trust, specified trust that issues

- beneficiary certificates, and securities as prescribed in Article 2, paragraph (1), items (viii)-3 through (xiii), items (xv) through (xv)-5, or item (xvii) of the Income Tax Act;
- (vi) depreciable assets: These mean depreciable assets as prescribed in Article 2, paragraph (1), item (xix) of the Income Tax Act;
- (vii) interest income, dividend income, real estate income, business income, employment income, retirement income, timber income, capital gains, occasional income, or miscellaneous income: These respectively mean interest income, dividend income, real estate income, business income, employment income, retirement income, timber income, capital gain, occasional income, and miscellaneous income as prescribed in Part II, Chapter II, Section 2, Subsection 1 of the Income Tax Act;
- (viii) the amount of dividend income, the amount of real estate income, the amount of business income, the amount of employment income, the amount of timber income, the amount of capital gains, or the amount of miscellaneous income: These respectively mean the amount of dividend income, the amount of real estate income, the amount of business income, the amount of employment income, the amount of timber income, the amount of capital gain, and the amount of miscellaneous income as prescribed in Part II, Chapter II, Section 2, Subsection 1 of the Income Tax Act;
- (ix) the amount of gross income, the amount of retirement income, or the amount of timber income: These respectively mean the amount of gross income, the amount of retirement income, and the amount of timber income as prescribed in Article 22, paragraph (2) or paragraph (3) of the Income Tax Act;
- (x) tax return: These mean the tax return as prescribed in Article 2, paragraph (1), item (xxxvii) of the Income Tax Act.
- (xi) blue return: These mean the blue return as prescribed in Article 2, paragraph (1), item (xl) of the Income Tax Act;
- (xii) tax return form filed after the due date: These mean a tax return filed after the due date as prescribed in Article 18, paragraph (2) of the Act on General Rules for National Taxes;
- (xiii) amended return form: These mean an amended return form as prescribed in Article 19, paragraph (3) of the Act on General Rules for National Taxes;
- (xiv) due date for filing a tax return: These mean the due date for filing a tax return as prescribed in Article 2, paragraph (1), item (xli) of the Income Tax Act;
- (xv) request for reassessment: These mean a request for reassessment as prescribed in Article 23, paragraph (2) of the Act on General Rules for National Taxes.
- (2) The meanings of the terms listed in the following items as used in Chapter III

are as prescribed respectively in those items:

- (i) in Japan or outside Japan: These mean "in Japan" or "outside Japan" as prescribed in Article 2, item (i) or item (ii) of the Corporation Tax Act;
- (i)-2 domestic corporation or foreign corporation: These mean a domestic corporation or a foreign corporation as prescribed in Article 2, item (iii) or item (iv) of the Corporation Tax Act, including an association or foundation without juridical personality as prescribed in the following item that has its head office or principal office in Japan as prescribed in the preceding item or that has its head office or principal office outside Japan as prescribed in the item;
- (ii) association or foundation without juridical personality: These mean an association or foundation without juridical personality as prescribed in Article 2, item (viii) of the Corporation Tax Act;
- (iii) merged corporation: These mean a merged corporation as prescribed in Article 2, item (xi) of the Corporation Tax Act;
- (iv) merging corporation: These mean a merging corporation as prescribed in Article 2, item (xii) of the Corporation Tax Act;
- (v) splitting corporation: These mean a split corporation as prescribed in Article 2, item (xii)-2 of the Corporation Tax Act;
- (vi) succeeding corporation in a company split: These mean a succeeding corporation in a company split as prescribed in Article 2, item (xii)-3 of the Corporation Tax Act;
- (vii) corporation making a capital contribution in kind: These mean a corporation making a capital contribution in kind as prescribed in Article 2, item (xii)-4 of the Corporation Tax Act;
- (viii) corporation receiving a capital contribution in kind: These mean a corporation receiving a capital contribution in kind as prescribed in Article 2, item (xii)-5 of the Corporation Tax Act;
- (ix) corporation effecting a post-formation contribution of assets: These mean a corporation effecting a post-formation contribution of assets as prescribed in Article 2, item (xii)-6 of the Corporation Tax Act;
- (x) corporation subject to a post-formation acquisition of assets: These mean a corporation subject to a post-formation acquisition of assets as prescribed in Article 2, item (xii)-6-2 of the Corporation Tax Act;
- (x)-2 wholly owned subsidiary corporation in a share exchange: These mean a wholly owned subsidiary corporation in a share exchange as prescribed in Article 2, item (xii)-6-3 of the Corporation Tax Act;
- (x)-3 wholly owned subsidiary corporation in a share transfer: These mean a wholly owned subsidiary corporation in a share transfer as prescribed in Article 2, item (xii)-6-5 of the Corporation Tax Act;
- (x)-4 consolidated parent corporation: These mean the consolidated parent

- corporation as prescribed in Article 2, item (xii)-7-2 of the Corporation Tax Act;
- (x)-5 consolidated subsidiary corporation: These mean a consolidated subsidiary corporation as prescribed in Article 2, item (xii)-7-3 of the Corporation Tax Act;
- (x)-6 consolidated corporation: These mean a consolidated corporation as prescribed in Article 2, item (xii)-7-4 of the Corporation Tax Act;
- (x)-7 consolidated full controlling interest: These mean a consolidated full controlling interest as prescribed in Article 2, item (xii)-7-5 of the Corporation Tax Act;
- (xi) qualified merger: These mean a qualified merger as prescribed in Article 2, item (xii)-8 of the Corporation Tax Act;
- (xii) company split by split-off: These mean a company split by split-off as prescribed in Article 2, item (xii)-9 of the Corporation Tax Act;
- (xiii) company split by spin-off: These mean a company split by spin-off as prescribed in Article 2, item (xii)-10 of the Corporation Tax Act;
- (xiv) qualified company split: These mean a qualified company split as prescribed in Article 2, item (xii)-11 of the Corporation Tax Act;
- (xv) qualified company split by split-off: These mean a qualified company split by split-off as prescribed in Article 2, item (xii)-12 of the Corporation Tax Act;
- (xvi) qualified company split by spin-off: These mean a qualified company split by spin-off as prescribed in Article 2, item (xii)-13 of the Corporation Tax Act;
- (xvii) qualified capital contribution in kind: These mean a qualified capital contribution in kind as prescribed in Article 2, item (xii)-14 of the Corporation Tax Act;
- (xviii) qualified post-formation acquisition of assets: These mean a qualified post-formation acquisition of assets as prescribed in Article 2, item (xii)-15 of the Corporation Tax Act;
- (xix) business year: These mean a business year as prescribed in Article 13 and Article 14 of the Corporation Tax Act;
- (xix)-2 consolidated business year: These mean a consolidated business year as prescribed in Article 15-2 of the Corporation Tax Act;
- (xx) the amount of revenue reserves: These mean the amount of revenue reserves as prescribed in Article 2, item (xviii) of the Corporation Tax Act.
- (xx)-2 the amount of consolidated revenue reserves: These mean the amount of consolidated revenue reserves as prescribed in Article 2, item (xviii)-2 of the Corporation Tax Act;
- (xxi) the amount of consolidated individual revenue reserves: These mean the amount of consolidated individual revenue reserves as prescribed in Article 2,

- item (xviii)-3 of the Corporation Tax Act;
- (xxii) consolidated income: These mean consolidated income as prescribed in Article 2, item (xviii)-4 of the Corporation Tax Act;
- (xxii)-2 the amount of loss: These mean the amount of loss as prescribed in Article 2, item (xix) of the Corporation Tax Act;
- (xxii)-3 the amount of consolidated loss: These mean the amount of consolidated loss as prescribed in Article 2, item (xix)-2 of the Corporation Tax Act;
- (xxiii) inventory assets: These mean inventory assets as prescribed in Article 2, item (xx) of the Corporation Tax Act;
- (xxiv) fixed assets: These mean fixed assets as prescribed in Article 2, item (xxii) of the Corporation Tax Act;
- (xxv) depreciable assets: These mean depreciable assets as prescribed in Article 2, item (xxiii) of the Corporation Tax Act;
- (xxvi) accounting as a tax deductible: These mean to accounting of an amount as a tax deductible as prescribed in Article 2, item (xxv) of the Corporation Tax Act;
- (xxvi)-2 trust subject to corporation taxation: These mean a trust subject to corporation taxation as prescribed in Article 2, item (xxix)-2 of the Corporation Tax Act;
- (xxvii) tax return, etc.: These mean the interim return form as prescribed in Article 2, item (xxx) of the Corporation Tax Act containing the matters listed in the items of Article 72, paragraph (1) of the Act, and the tax return as prescribed in Article 2, item (xxxi) of the Act;
- (xxvii)-2 consolidated tax return, etc.: These mean the consolidated interim return form as prescribed in Article 2, item (xxxi)-2 of the Corporation Tax Act containing the matters listed in the items of Article 81-20, paragraph (1) of the Act, and the consolidated tax return as prescribed in Article 2, item (xxxii) of the Act;
- (xxviii) blue return: These mean a blue return as prescribed in Article 2, item (xl) of the Corporation Tax Act;
- (xxix) tax return filed after the due date: These mean a tax return filed after the due date as prescribed in Article 18, paragraph (2) of the Act on General Rules for National Taxes.

(Application of This Act to Trustees of Trusts Subject to Corporation Taxation)  
 Article 2-2 (1)

- (3) The provisions of Article 4-6, paragraph (2), Article 4-7, and Article 4-8 of the Corporation Tax Act apply mutatis mutandis in the case where the provisions of paragraph (1) apply in Chapter III.

## **Chapter II Special Provisions on the Income Tax Act**

### **Section 1 Interest Income and Dividend Income**

(Separate Taxation on Interest Income)

- Article 3 (1) With regard to the interest, etc. prescribed in Article 23, paragraph (1) of the Income Tax Act (excluding interest, etc. specified by Cabinet Order; hereinafter referred to in this Article and the following Article as "interest, etc.") that a resident or a nonresident with a permanent establishment in Japan is to receive in Japan on or after April 1, 1988 (for ordinary deposits and others specified by Cabinet Order as being equivalent thereto, on or after the day specified by Cabinet Order; the same applies in paragraph (3) and the following Article), income tax is imposed separately from other income by applying the tax rate of 15 percent on the receivable amount, notwithstanding the provisions of Article 22, Article 89, and Article 165 of the Act.
- (2) The provisions of the preceding paragraph do not apply to interest, etc. to be received by a nonresident listed in Article 164, paragraph (1), item (ii) or item (iii) of the Income Tax Act that is not attributed to their business as prescribed in those provisions.
- (3) The part of the provisions of Article 224, paragraphs (1) through (3), Article 225, paragraph (1) and Article 228, paragraph (1) of the Income Tax Act that pertains to interest, etc. to be received on or after April 1, 1988 does not apply to a resident or a nonresident who receives the payment thereof, a person who makes the payment, a resident or a nonresident who receives the interest, etc. from a person who receives interest, etc. as a registered person on behalf of another person in connection with a business, or a person who receives the interest, etc. as the registered person.

(Special Provisions on Payment Records for Interest Income Paid to Domestic Corporations)

Article 3-2 Where a person, who pays the interest, etc. payable on or after April 1, 1988 or the dividends, etc. prescribed in Article 24, paragraph (1) of the Income Tax Act (excluding dividends of surplus prescribed in the paragraph) pertaining to a distribution of proceeds from an investment trust (excluding a bond investment trust, a specified stock investment trust (meaning a securities investment trust which has as its purpose the management of its trust property through investment exclusively in stocks, whose beneficial rights are listed on a financial instruments exchange as prescribed in Article 2, paragraph (16) of the Financial Instruments and Exchange Act (Act No. 25 of 1948), and which meets other requirements specified by Cabinet Order; hereinafter the same applies in this Section), and a public and corporate bond investment trust) or a distribution of proceeds from a specified trust that

issues beneficiary certificates, to a domestic corporation or a foreign corporation with a permanent establishment in Japan, prepares the record set forth in Article 225, paragraph (1) of the Act concerning the payment of the interest, etc. or dividends, etc. for each payment to the same domestic corporation or foreign corporation with a permanent establishment in Japan, as specified by Order of the Ministry of Finance, such person must submit the record to the district director of the tax office no later than the last day of the month following the month that includes the day on which the payment was determined (for a record concerning interest on bearer government or company bonds or a distribution of proceeds based on bearer beneficiary certificates of a loan trust, investment trust (excluding a specified stock investment trust), or trust that issues specified beneficiary certificates, no later than the last day of the month following the month that includes the day on which the payment was made), notwithstanding the provisions of the paragraph.

(Special Provisions on Taxation on Interest from Book-Entry Government Bonds)

Article 5-2 (1) Where a nonresident or foreign corporation who satisfies the requirements specified in each of the following items for the category of bonds listed in the relevant item that are held thereby, receives payment of interest (excluding interest subject to the provisions of Article 8, paragraph (1) or paragraph (2)) on book-entry government bonds prescribed by Article 88 of the Act on the Book-Entry Transfer of Company Bonds, Shares (excluding coupon-only book-entry government bonds prescribed in Article 90, paragraph (3) of the Act; hereinafter referred to in this Article as "book-entry government bonds") or municipal bonds which are subject to the provisions of the Act pursuant to Article 66 of the Act as applied mutatis mutandis pursuant to Article 113 of the Act (hereinafter referred to in this Article as "book-entry municipal bonds"), for which the nonresident or foreign corporation has made entries or records under the book-entry transfer system in the account that they or it has established with a specified book-entry transfer institution, a specified account management institution, or a specified secondary account management institution (hereinafter referred to in this Article as a "specified book-entry transfer institution, etc.") or a qualified foreign intermediary, via a business office or any other office of the specified book-entry transfer institution, etc. located in Japan (including a post office; hereinafter referred to in this Article as a "business office, etc.") or a specified overseas business office, etc. of the qualified foreign intermediary, income tax is not imposed with respect to such interest received (limited to the part of interest equivalent to the amount calculated pursuant to the method specified by Cabinet Order as the amount corresponding to the period during which the nonresident or

foreign corporation has continued to hold the book-entry government bonds or the book-entry municipal bonds (limited to the period during which they or it has continued to hold entries or records under the book-entry transfer system regarding the book-entry government bonds or the book-entry municipal bonds; hereinafter referred to in this Article as the "holding period"):

(i) book-entry government bonds: The following requirements:

- (a) the nonresident or foreign corporation, when seeking the application of the provisions of this paragraph for the first time with regard to interest on the book-entry government bonds, submits a document stating such intention, their or its name and address (or a place specified by Order of the Ministry of Finance for a nonresident who has a residence in Japan or any other person specified by Order of the Ministry of Finance; hereinafter the same applies in this Article) and any other matters specified by Order of the Ministry of Finance (hereinafter referred to in this Article as a "written application for a tax exemption on book-entry government bonds") to the competent district director with jurisdiction over the place for tax payment pertaining to the interest pursuant to the provisions of Article 17 of the Income Tax Act, via the specified book-entry transfer institution, etc. (in the case where the specified book-entry transfer institution, etc. is a specified account management institution, submission is made via the specified book-entry transfer institution, etc. and a specified book-entry transfer institution; in the case where the specified book-entry transfer institution, etc. is a specified secondary account management institution, submission is made via [1]the specified book-entry transfer institution, etc. (in the case where the specified book-entry transfer institution, etc. makes entries or records under the book-entry transfer system regarding the book-entry government bonds through another specified secondary account management institution, submission is made via the specified book-entry transfer institution, etc. and such other specified secondary account management institution pertaining to the entries or records under the book-entry transfer system regarding the book-entry government bonds), [2] the specified account management institution pertaining to the entries or records under the book-entry transfer system regarding the book-entry government bonds, and [3] a specified book-entry transfer institution; hereinafter the same applies in this item), or via a qualified foreign intermediary (in the case where the qualified foreign intermediary is a tertiary foreign account management institution, submission is made via the qualified foreign intermediary (in the case where the qualified foreign intermediary makes entries or records under the book-entry transfer system regarding the book-entry government bonds through another tertiary foreign account management institution, submission is made via



the qualified foreign intermediary and such other tertiary foreign account management institution pertaining to the entries or records under the book-entry transfer system regarding the book-entry government bonds) and the secondary foreign account management institution pertaining to the entries or records under the book-entry transfer system regarding the book-entry government bonds; the same applies in (b)) and the specified book-entry transfer institution pertaining to the entries or records under the book-entry transfer system regarding the book-entry government bonds; and

- (b) the nonresident or foreign corporation, no later than the day preceding the day on which they or it is to receive interest on the book-entry government bonds, has submitted a document stating their or its holding period for the book-entry government bonds and any other matters specified by Order of the Ministry of Finance (referred to in paragraph (8) and paragraph (17) as a "statement of the holding period of book-entry government bonds") to the district director of the tax office prescribed in (a), via the specified book-entry transfer institution, etc. or via the qualified foreign intermediary and the specified book-entry transfer institution, etc. pertaining to the entries or records under the book-entry transfer system regarding the book-entry government bonds;
- (ii) book-entry municipal bonds: The following requirements:
  - (a) the nonresident or foreign corporation, when seeking the application of the provisions of this paragraph for the first time with regard to interest on book-entry municipal bonds, has submitted a document stating such intention, their or its name and address, and any other matters specified by Order of the Ministry of Finance (hereinafter referred to in this Article as a "written application for a tax exemption for book-entry municipal bonds") to the competent district director with jurisdiction over the place for tax payment pertaining to the interest pursuant to the provisions of Article 17 of the Income Tax Act, via the specified book-entry transfer institution, etc. (in the case where the specified book-entry transfer institution, etc. is a specified account management institution, submission is made via the specified book-entry transfer institution, etc. and a specified book-entry transfer institution; in the case where the specified book-entry transfer institution, etc. is a specified secondary account management institution, submission is made via [1] the specified book-entry transfer institution, etc. (in the case where the specified book-entry transfer institution, etc. makes entries or records under the book-entry transfer system regarding the book-entry municipal bonds through another specified secondary account management institution, submission is made via the specified book-entry transfer institution, etc. and such other

specified secondary account management institution pertaining to the entries or records under the book-entry transfer system regarding the book-entry municipal bonds), [2] the specified account management institution pertaining to the entries or records under the book-entry transfer system regarding the book-entry municipal bonds, and [3] a specified book-entry transfer institution; hereinafter the same applies in this item), and the person who pays the interest; or submission is made via [1] a qualified foreign intermediary (in the case where the qualified foreign intermediary is a tertiary foreign account management institution, submission is made via the qualified foreign intermediary (in the case where the qualified foreign intermediary makes entries or records under the book-entry transfer system regarding the book-entry municipal bonds through another tertiary foreign account management institution, submission is made via the qualified foreign intermediary and such other tertiary foreign account management institution pertaining to the entries or records under the book-entry transfer system regarding the book-entry municipal bonds) and the secondary foreign account management institution pertaining to the entries or records under the book-entry transfer system regarding the book-entry municipal bonds; the same applies in (b)), [2] the specified book-entry transfer institution pertaining to the entries or records under the book-entry transfer system regarding the book-entry municipal bonds, and [3] the person who pays the interest; and

(b) the nonresident or foreign corporation, no later than the day preceding the day on which they or it is to receive interest on the book-entry municipal bonds, has submitted a document stating their or its holding period for the book-entry municipal bonds and any other matters specified by Order of the Ministry of Finance (referred to in paragraph (8) and paragraph (17) as the "statement of the holding period of book-entry municipal bonds") to the district director of the tax office prescribed in (a), via the specified book-entry transfer institution, etc. and the person who pays the interest, or via the qualified foreign intermediary, the specified book-entry transfer institution, etc. pertaining to the entries or records under the book-entry transfer system regarding the book-entry municipal bonds, and the person who pays the interest.

(2) With respect to interest on book-entry government bonds and interest on book-entry municipal bonds to be received by a nonresident or foreign corporation who is the trustee of a foreign investment trust (meaning a foreign investment trust prescribed in Article 2, paragraph (22) of the Act on Investment Trusts and Investment Corporations (Act No. 198 of 1951); hereinafter the same applies in this paragraph), for the trust property under

the foreign investment trust, the provisions of the preceding paragraph apply only where the foreign investment trust is one that satisfies the following requirements (referred to as a "qualified foreign securities investment trust" in paragraph (9)):

- (i) the foreign investment trust falls under the category of a securities investment trust or a public and corporate bond investment trust.
  - (ii) the public offering of beneficial rights based on the establishment of the foreign investment trust has been conducted, outside Japan, by way of a solicitation for acquisition prescribed in Article 2, paragraph (3) of the Financial Instruments and Exchange Act which is equivalent to the one listed in item (i) of Article 2, paragraph (3), and it is stated in the prospectus of the foreign investment trust or any other document similar thereto that the relevant solicitation for acquisition is equivalent to the one listed in the item.
  - (iii) the public offering of beneficial rights based on the establishment of the foreign investment trust has not been conducted in Japan.
- (3) The provisions of paragraph (1) do not apply to interest on book-entry government bonds and interest on book-entry municipal bonds to be received by a nonresident with a permanent establishment in Japan, which is attributed to a business conducted by the nonresident in Japan or which is otherwise specified by Cabinet Order. In this case, where the nonresident satisfies the requirements specified in the items of the paragraph, the provisions of Article 212 of the Income Tax Act do not apply to the interest to be received (limited to the part of interest equivalent to the amount calculated pursuant to the method specified by Cabinet Order as the amount corresponding to the holding period).
- (4) With regard to the application of the provisions of Article 3 and Article 3-2 in the case where the provisions of paragraph (1) and the preceding paragraph apply, in Article 3, paragraph (1), the phrase "excluding interest specified by Cabinet Order; hereinafter referred to in this Article and the following Article as 'interest, etc.' " is deemed to be replaced with "excluding interest subject to the provisions of the second sentence of Article 5-2, paragraph (3); hereinafter referred to in this Article as 'interest, etc.' "; in Article 3, paragraph (3), the phrase "interest, etc. receivable" is deemed to be replaced with "interest, etc. (excluding interest subject to the provisions of Article 5-2, paragraph (1); hereinafter the same applies in this paragraph) receivable"; in Article 3-2, the phrase "a domestic corporation or a foreign corporation with a permanent establishment in Japan" is deemed to be replaced with "nonresident or foreign corporation," the phrase "interest, etc. payable" is deemed to be replaced with "interest payable subject to the provisions of Article 5-2, paragraph (1) or the second sentence of Article 5-2, paragraph (3)," and the phrase "the interest,

etc." is deemed to be replaced with "the interest."

- (5) In this Article, the meanings of the terms listed in the following items are as prescribed respectively in those items:
- (i) specified book-entry transfer institution: A book-entry transfer institution as prescribed in Article 2, paragraph (2) of the Act on the Book-Entry Transfer of Company Bonds, Shares, etc. (including an institution that is deemed to be a book-entry transfer institution pursuant to the provisions of Article 48 of the Act), which has obtained consent from the State for handling government bonds pursuant to the provisions of Article 13 of the Act or obtained consent from the issuer of local government bonds for handling the local government bonds pursuant to the provisions of the Article;
  - (ii) specified account management institution: An account management institution prescribed in Article 2, paragraph (4) of the Act on the Book-Entry Transfer of Company Bonds, Shares (referred to in the following item and item (vii) as an "account management institution"), with which a specified book-entry transfer institution has established an account pursuant to the provisions of Article 12, paragraph (1) of the Act;
  - (iii) specified secondary account management institution: An account management institution that falls under any one of the following (excluding an institution that falls under the category of a secondary foreign account management institution):
    - (a) an institution with which a specified account management institution has established an account pursuant to the provisions of Article 44, paragraph (1) of the Act on the Book-Entry Transfer of Company Bonds, Shares;
    - (b) an institution with which an institution that falls under the category of a specified secondary account management institution pursuant to the provisions of (a) or (c) has established an account pursuant to the provisions of Article 44, paragraph (1) of the Act on the Book-Entry Transfer of Company Bonds, Shares; or
    - (c) an institution with which an institution that falls under the category of a specified secondary account management institution pursuant to the provisions of (b) has established an account pursuant to the provisions of Article 44, paragraph (1) of the Act on the Book-Entry Transfer of Company Bonds, Shares;
  - (iv) qualified foreign intermediary: A secondary foreign account management institution or tertiary foreign account management institution that has obtained, in the capacity of an institution that has its head office or principal office in a contracting State other than Japan (referred to in the following item as the "other contracting State") of a convention prescribed by Article 162 of the Income Tax Act (limited to a convention that provides that the Contracting States are to exchange information on the assessment and

- collection of taxes with each other), pursuant to the provisions of Cabinet Order, the approval of the district director of the tax office prescribed in paragraph (1), item (i), (a) for book-entry government bonds or the approval of the district director of the tax office prescribed in paragraph (1), item (ii), (a) for book-entry municipal bonds;
- (v) specified overseas business office, etc.: A business office or any other office of a qualified foreign intermediary, which is located in the other contracting State;
- (vi) entries or records under the book-entry transfer system: Entries or records in a transfer account book provided for in the Act on the Book-Entry Transfer of Company Bonds, Shares which are made pursuant to the provisions of the Act;
- (vii) tertiary foreign account management institution: An account management institution (limited to an institution that falls under the category of institution prescribed in Article 44, paragraph (1), item (xiii) of the Act on the Book-Entry Transfer of Company Bonds, Shares, and excluding a domestic corporation; referred to in the following item as a "foreign account management institution"), which falls under any one of the following:
- (a) an institution with which a secondary foreign account management institution has established an account pursuant to the provisions of Article 44, paragraph (1) of the Act on the Book-Entry Transfer of Company Bonds, Shares;
- (b) an institution with which an institution that falls under the category of a tertiary foreign account management institution pursuant to the provisions of (a) or (c) has established an account pursuant to the provisions of Article 44, paragraph (1) of the Act on the Book-Entry Transfer of Company Bonds, Shares; or
- (c) an institution with which an institution that falls under the category of a tertiary foreign account management institution pursuant to the provisions of (b) has established an account pursuant to the provisions of Article 44, paragraph (1) of the Act on the Book-Entry Transfer of Company Bonds, Shares;
- (viii) secondary foreign account management institution: A foreign account management institution with which a specified account management institution or specified secondary account management institution has established an account pursuant to the provisions of Article 44, paragraph (1) of the Act on the Book-Entry Transfer of Company Bonds, Shares.
- (6) Where an application for approval set forth in item (iv) of the preceding paragraph has been filed, the district director of the tax office may dismiss the application when they find a fact that falls under any one of the following items with regard to the applicant:

- (i) any document necessary for filing the application contains a defective or false entry or that the application has not otherwise been filed pursuant to the provisions of Cabinet Order prescribed in item (iv) of the preceding paragraph;
  - (ii) the applicant is delinquent in paying national taxes at the time in question, and it is significantly difficult to collect the amount of taxes in arrears; or
  - (iii) there are reasonable grounds for finding that it is difficult for the applicant to keep the books, make records therein, or preserve the books pursuant to the provisions of paragraph (13) or to give notice pursuant to the provisions of paragraph (14).
- (7) When the district director of the tax office finds that a fact that falls under any one of the items of the preceding paragraph has occurred with regard to an institution that has obtained the approval set forth in paragraph (5), item (iv), they may rescind the approval pursuant to the provisions of Cabinet Order.
- (8) In the case referred to in paragraph (1), item (i) or item (ii), where a written application for a tax exemption on book-entry government bonds or a statement of the holding period of book-entry government bonds has been submitted to the district director of the tax office prescribed in item (i), (a) of the paragraph or a written application for a tax exemption on book-entry municipal bonds or a statement of the holding period of book-entry municipal bonds has been submitted to the district director of the tax office prescribed in item (ii), (a) of the paragraph, it is deemed that the submission to the relevant district director of the tax office has been made when the business office, etc. of the specified book-entry transfer institution, etc. or the specified overseas business office, etc. of the qualified foreign intermediary, via which submission should be made, has received the written application for a tax exemption on book-entry government bonds or statement of the holding period of book-entry government bonds or the written application for a tax exemption on book-entry municipal bonds or statement of the holding period of book-entry municipal bonds, from the person who submitted the relevant document.
- (9) A person who submits a written application for a tax exemption on book-entry government bonds or a written application for a tax exemption on book-entry municipal bonds, upon submission, present their certificate of alien registration, the corporation's certificate of registered matters, and any other document specified by Cabinet Order to the head of the business office, etc. of the specified book-entry transfer institution, etc. or the head of the specified overseas business office, etc. of the qualified foreign intermediary, to which the written application for a tax exemption on book-entry government bonds or written application for a tax exemption on book-entry municipal bonds is submitted, and the head of the business office, etc. of the specified book-entry transfer institution, etc. or the head of the specified overseas business office,

etc. of the qualified foreign intermediary must confirm, by the documents presented thereto, the name and address stated in the written application for a tax exemption on book-entry government bonds or the written application for a tax exemption on book-entry municipal bonds (in the case where the provisions of paragraph (2) apply, such name and address, as well as the name of the qualified foreign securities investment trust must be confirmed).

- (10) Where a person who has submitted a written application for a tax exemption on book-entry government bonds has, after submission, changed the name or address initially stated in the written application for a tax exemption on book-entry government bonds, the person, no later than the day preceding the day on which the person is to receive, for the first time since the date of the change, payment of interest on the book-entry government bonds for which the person made entries or records under the book-entry transfer system through the specified book-entry transfer institution, etc. or qualified foreign intermediary to which the person submitted the written application for a tax exemption on book-entry government bonds, submits a written application stating the person's new name or address and any other matters specified by Order of the Ministry of Finance, to the district director of the tax office prescribed in paragraph (1), item (i), (a), via the specified book-entry transfer institution, etc. (in the case where the specified book-entry transfer institution, etc. is a specified account management institution, submission must be made via the specified book-entry transfer institution, etc. and a specified book-entry transfer institution; in the case where the specified book-entry transfer institution, etc. is a specified secondary account management institution, submission must be made via [1] the specified book-entry transfer institution, etc. (in the case where the specified book-entry transfer institution, etc. makes entries or records under the book-entry transfer system regarding the book-entry government bonds through another specified secondary account management institution, submission must be made via the specified book-entry transfer institution, etc. and such other specified secondary account management institution pertaining to the entries or records under the book-entry transfer system regarding the book-entry government bonds), [2] the specified account management institution pertaining to the entries or records under the book-entry transfer system regarding the book-entry government bonds, and [3] a specified book-entry transfer institution; hereinafter the same applies in this paragraph), or via the qualified foreign intermediary (in the case where the qualified foreign intermediary is a tertiary foreign account management institution, submission must be made via the qualified foreign intermediary (in the case where the qualified foreign intermediary makes entries or records under the book-entry transfer system regarding the book-entry government bonds through another tertiary foreign account management

institution, submission must be made via the qualified foreign intermediary and such other tertiary foreign account management institution pertaining to the entries or records under the book-entry transfer system regarding the book-entry government bonds) and the secondary foreign account management institution pertaining to the entries or records under the book-entry transfer system regarding the book-entry government bonds) and the specified book-entry transfer institution pertaining to the entries or records under the book-entry transfer system regarding the book-entry government bonds. In this case, where the person has failed to submit the written application, the provisions of paragraph (1) do not apply to interest on the book-entry government bonds to be received by the person on or after the day on which the change has been made.

- (11) Where a person who submitted a written application for a tax exemption on book-entry municipal bonds has, after submission, changed the name or address initially stated in the written application for a tax exemption on book-entry municipal bonds, the person must, no later than the day preceding the day on which the person is to receive, for the first time since the date of change, payment of interest on the book-entry municipal bonds for which the person made entries or records under the book-entry transfer system through the specified book-entry transfer institution, etc. or qualified foreign intermediary to which the person submitted the written application for a tax exemption on book-entry municipal bonds, submit a written application stating the person's new name or address and any other matters specified by Order of the Ministry of Finance, to the district director of the tax office prescribed in paragraph (1), item (ii), (a), via the specified book-entry transfer institution, etc. (in the case where the specified book-entry transfer institution, etc. is a specified account management institution, submission must be made via the specified book-entry transfer institution, etc. and a specified book-entry transfer institution; in the case where the specified book-entry transfer institution, etc. is a specified secondary account management institution, submission must be made via [1] the specified book-entry transfer institution, etc. (in the case where the specified book-entry transfer institution, etc. makes entries or records under the book-entry transfer system regarding the book-entry municipal bonds through another specified secondary account management institution, submission must be made via the specified book-entry transfer institution, etc. and such other specified secondary account management institution pertaining to the entries or records under the book-entry transfer system regarding the book-entry municipal bonds), [2] the specified account management institution pertaining to the entries or records under the book-entry transfer system regarding the book-entry municipal bonds, and [3] a specified book-entry transfer institution; hereinafter the same applies in this paragraph) and the



person who pays the interest, or via [1] the qualified foreign intermediary (in the case where the qualified foreign intermediary is a tertiary foreign account management institution, submission must be made via the qualified foreign intermediary (in the case where the qualified foreign intermediary makes entries or records under the book-entry transfer system regarding the book-entry municipal bonds through another tertiary foreign account management institution, submission must be made via the qualified foreign intermediary and such other tertiary foreign account management institution pertaining to the entries or records under the book-entry transfer system regarding the book-entry municipal bonds) and the secondary foreign account management institution pertaining to the entries or records under the book-entry transfer system regarding the book-entry municipal bonds), [2] the specified book-entry transfer institution pertaining to the entries or records under the book-entry transfer system regarding the book-entry municipal bonds, and [3] the person who pays the interest. In this case, where the person has failed to submit the written application, the provisions of paragraph (1) do not apply to interest on the book-entry municipal bonds to be received by the person on or after the day on which the change is made.

(12) The provisions of paragraph (8) and paragraph (9) apply mutatis mutandis where the person who submits a written application prescribed in the preceding two paragraphs submits the relevant written application. In this case: in paragraph (8), the phrase "paragraph (1), item (i) or item (ii)" is deemed to be replaced with "paragraph (10) or paragraph (11)"; the phrase "a written application for a tax exemption on book-entry government bonds or a statement of the holding period of book-entry government bonds has been submitted to the district director of the tax office prescribed in item (i), (a) of the paragraph" is deemed to be replaced with "a written application prescribed in paragraph (10) has been submitted to the district director of the tax office prescribed in paragraph (1), item (i), (a)"; the phrase "a written application for a tax exemption on book-entry municipal bonds or a statement of the holding period of book-entry municipal bonds has been submitted to the district director of the tax office prescribed in item (ii), (a) of the paragraph" is deemed to be replaced with "a written application prescribed in paragraph (11) has been submitted to the district director of the tax office prescribed in paragraph (1), item (ii), (a)"; the phrase "the written application for a tax exemption on book-entry government bonds or statement of the holding period of book-entry government bonds or the written application for a tax exemption on book-entry municipal bonds or statement of the holding period of book-entry municipal bonds" is deemed to be replaced with "the relevant written application"; in paragraph (9), the phrase "person who submits a written application for a tax exemption on book-entry government bonds or a written application for a tax

exemption on book-entry municipal bonds" is deemed to be replaced with "person who submits a written application prescribed in the following paragraph or paragraph (11)"; the phrase "the written application for a tax exemption on book-entry government bonds or the written application for a tax exemption on book-entry municipal bonds" is deemed to be replaced with "the relevant written application"; the term "name" is deemed to be replaced with "new name."

- (13) A specified book-entry transfer institution, etc. and a qualified foreign intermediary must keep books with regard to book-entry government bonds or book-entry municipal bonds for which a person who has submitted a written application for a tax exemption on book-entry government bonds or a written application for a tax exemption on book-entry municipal bonds made entries or records under the book-entry transfer system through the specified book-entry transfer institution, etc. or the qualified foreign intermediary, and must state or record in such books, pursuant to the provisions of Cabinet Order, the day on which entries or records under the book-entry transfer system were made with regard to the book-entry government bonds or book-entry municipal bonds, and any other matters specified by Order of the Ministry of Finance, for each person who has submitted the written application for a tax exemption on book-entry government bonds or the written application for a tax exemption on book-entry municipal bonds.
- (14) A qualified foreign intermediary must, for each person who has submitted a written application for a tax exemption on book-entry government bonds or a written application for a tax exemption on book-entry municipal bonds, pursuant to the provisions of Cabinet Order, give notice of the day on which entries or records under the book-entry transfer system were made with regard to the book-entry government bonds or book-entry municipal bonds for which the person who has submitted the written application for a tax exemption on book-entry government bonds or the written application for a tax exemption on book-entry municipal bonds made entries or records under the book-entry transfer system through the qualified foreign intermediary, and any other matters specified by Order of the Ministry of Finance, to the specified book-entry transfer institution, etc. through which the qualified foreign intermediary made entries or records under the book-entry transfer system regarding the book-entry government bonds or book-entry municipal bonds (in the case where the qualified foreign intermediary is a tertiary foreign account management institution, notice must be given to the specified book-entry transfer institution, etc. through which the secondary foreign account management institution pertaining to the entries or records under the book-entry transfer system regarding the book-entry government bonds or book-entry municipal bonds made entries or records under the book-entry transfer

system regarding the book-entry government bonds or book-entry municipal bonds) by way of a document or any other means specified by Cabinet Order. In this case, the specified book-entry transfer institution, etc. must keep the books with regard to the book-entry government bonds or book-entry municipal bonds, and must state or record, pursuant to the provisions of Cabinet Order, these matters in such books for each person who has submitted the relevant written application.

(15) With regard to book-entry government bonds that satisfy the following requirements and that a nonresident or foreign corporation has acquired before the last day of the accounting period for interest thereon (in the case where the nonresident or foreign corporation has made entries or records under the book-entry transfer system regarding the book-entry government bonds through a specified book-entry transfer institution, etc. (in the case where entries or records under the book-entry transfer system regarding the book-entry government bonds have been made through a qualified foreign intermediary: the specified book-entry transfer institution, etc. prescribed in the preceding paragraph that is related to the qualified foreign intermediary pertaining to the book-entry government bonds; hereinafter the same applies in this paragraph) through which the person who held the book-entry government bonds before acquisition (hereinafter referred to in this paragraph as the "previous holder") made entries or records under the book-entry transfer system regarding the book-entry government bonds, the requirements listed in item (i) and item (ii) apply) (such government bonds hereinafter referred to as "government bonds eligible for aggregation"), the nonresident's or foreign corporation's holding period pertaining to the government bonds eligible for aggregation is to include the previous holder's holding period pertaining to the government bonds eligible for aggregation:

(i) the book-entry government bonds were held by a nonresident, foreign corporation, any of the domestic corporations listed in Appended Table 1 of the Income Tax Act or a trustee of a charitable trust or participant protection trust prescribed in Article 11, paragraph (2) of the Act (hereinafter referred to in this item and item (i) of the following paragraph as a "charitable trust, etc."), or a financial institution prescribed in Article 8, paragraph (1) (limited to a domestic corporation), financial instruments business operator, etc. prescribed in Article 8, paragraph (2) (limited to a domestic corporation) or domestic corporation prescribed in Article 8, paragraph (3) (for book-entry government bonds that were held by a nonresident or foreign corporation: limited to those specified by Cabinet Order; for book-entry government bonds that were held by a trustee of a charitable trust, etc.: limited to those included in the trust property under the charitable trust, etc.), and any of those persons made entries or records under the book-entry transfer system

regarding the book-entry government bonds immediately before their acquisition:

(ii) the nonresident or foreign corporation has continued to make entries or records under the book-entry transfer system regarding the book-entry government bonds after the acquisition thereof; and

(iii) the specified book-entry transfer institution, etc. through which the nonresident or foreign corporation has made entries or records under the book-entry transfer system regarding the book-entry government bonds has received notice, from the specified book-entry transfer institution, etc. through which the previous holder of the book-entry government bonds made entries or records under the book-entry transfer system regarding the book-entry government bonds stating the previous holder's holding period pertaining to the book-entry government bonds and any other matters specified by Order of the Ministry of Finance, by way of a document or any other means specified by Cabinet Order.

(16) With regard to book-entry municipal bonds that satisfy the following requirements and that a nonresident or foreign corporation has acquired before the last day of the accounting period for interest thereon (in the case where the nonresident or foreign corporation has made entries or records under the book-entry transfer system regarding the book-entry municipal bonds through the specified book-entry transfer institution, etc. (in the case where entries or records under the book-entry transfer system regarding the book-entry municipal bonds have been made through a qualified foreign intermediary: the specified book-entry transfer institution, etc. prescribed in paragraph (14) that is related to the qualified foreign intermediary pertaining to the book-entry municipal bonds; hereinafter the same applies in this paragraph) through which the person who held the book-entry municipal bonds before acquisition (hereinafter referred to in this paragraph as the "previous holder") made entries or records under the book-entry transfer system regarding the book-entry municipal bonds, the requirements listed in item (i) and item (ii) apply) (such local government bonds hereinafter referred to as "local government bonds eligible for aggregation"), the nonresident's or foreign corporation's holding period pertaining to the local government bonds eligible for aggregation is to include the previous holder's holding period pertaining to the local government bonds eligible for aggregation:

(i) that book-entry municipal bonds were held by a nonresident, foreign corporation, any of the domestic corporations listed in Appended Table 1 of the Income Tax Act or a trustee of a charitable trust, etc., or a financial institution prescribed in Article 8, paragraph (1) (limited to a domestic corporation), financial instruments business operator, etc. prescribed in Article 8, paragraph (2) (limited to a domestic corporation) or domestic

- corporation prescribed in Article 8, paragraph (3) (for book-entry municipal bonds that were held by a nonresident or foreign corporation: limited to those specified by Cabinet Order; for book-entry municipal bonds that were held by a trustee of a charitable trust, etc.: limited to those included in the trust property under the charitable trust, etc.), and any of those persons made entries or records under the book-entry transfer system regarding the book-entry municipal bonds immediately before the acquisition thereof;
- (ii) the nonresident or foreign corporation has continued to make entries or records under the book-entry transfer system regarding the book-entry municipal bonds after the acquisition thereof; and
  - (iii) the specified book-entry transfer institution, etc. through which the nonresident or foreign corporation has made entries or records under the book-entry transfer system regarding the book-entry municipal bonds has received notice, from the specified book-entry transfer institution, etc. through which the previous holder of the book-entry municipal bonds made entries or records under the book-entry transfer system regarding the book-entry municipal bonds, stating the previous holder's holding period pertaining to the book-entry municipal bonds and any other matters specified by Order of the Ministry of Finance, by way of a document or any other means specified by Cabinet Order.
- (17) Special provisions for the submission by a specified book-entry transfer institution, etc. of a written application for a tax exemption of book-entry government bonds or statement of the holding period of book-entry government bonds or a written application for a tax exemption on book-entry municipal bonds or a statement of the holding period of book-entry municipal bonds, matters concerning the preservation of documents, etc. pertaining to the notice set forth in paragraph (15), item (iii) or paragraph (16), item (iii), and other necessary matters concerning the application of the provisions of paragraphs (1) through (4) and paragraph (6) through the preceding paragraph are specified by Cabinet Order.

(Special Provisions on Taxation on Interest from Foreign Private Bonds)

Article 6 (1) A domestic corporation is liable to pay income tax with respect to interest (excluding interest subject to the provisions of Article 3-3, paragraph (2) or paragraph (6)) receivable on foreign private bonds (meaning bonds issued outside Japan by a corporation (for bonds issued by a foreign corporation, limited to bonds specified by Cabinet Order as those pertaining to the business conducted in Japan by the foreign corporation), interest on which is to be paid outside Japan; the same applies in paragraph (11)) other than designated foreign private bonds prescribed in paragraph (11) (hereinafter referred to in this Article as "general foreign private bonds"), which have been issued during

the period from April 1, 1998, to March 31, 2010, and income tax is imposed by applying a tax rate of 15 percent to the amount of interest receivable (for interest on general foreign private bonds issued by a foreign corporation, to the amount specified by Cabinet Order as that pertaining to the business conducted in Japan by the foreign corporation).

- (2) A person who pays interest (excluding interest subject to the provisions of Article 3-3, paragraph (3) or paragraph (6)) on general foreign private bonds that the person has issued during the period from April 1, 1998, to March 31, 2010, to a resident or domestic corporation, upon payment, must collect income tax equivalent to the amount calculated by multiplying the amount of interest payable (for interest on general foreign private bonds issued by a foreign corporation, the amount specified by Cabinet Order as that pertaining to the business conducted in Japan by the foreign corporation) by a tax rate of 15 percent, and pay it to the State no later than the last day of the month following the month that includes the date of collection.
- (3) Income tax to be collected and paid pursuant to the provisions of the preceding paragraph is deemed to be withholding at the source as prescribed in Article 2, paragraph (1), item (xlv) of the Income Tax Act, and the provisions of the Act, the Act on General Rules for National Taxes, and the National Tax Collection Act are applied thereto. In this case, where the person who is to receive interest receivable on general foreign private bonds prescribed in paragraph (1) is a domestic corporation, with regard to the application of the provisions of the Corporation Tax Act to the domestic corporation, the phrase "or prize money" in Article 68, paragraph (1), Article 81-14, paragraph (1) and Article 100, paragraph (1) of the Act is deemed to be replaced with "or prize money... or interest receivable on general foreign private bonds prescribed in Article 6, paragraph (1) of the Act on Special Measures Concerning Taxation (Special Provisions on Taxation of Interest on Foreign Private Bonds, etc.)," and the phrase "the Act" in these clauses is deemed to be replaced with "the Income Tax Act or the Act on Special Measures Concerning Taxation."
- (4) Where a nonresident or foreign corporation receives a payment of interest on general foreign private bonds issued during the period from April 1, 1998, to March 31, 2010 (excluding those issued by a foreign corporation which is specified by Cabinet Order as a foreign corporation whose tax burden to be imposed on its income earned in a state or territory where its head office or principal office is located is significantly lower than the tax burden to be imposed on the income of a corporation in Japan; the same applies in paragraph (7) and paragraph (8)), and the nonresident or foreign corporation has submitted, upon receiving payment of interest, a written application stating that that person or it seeks the application of the provisions of this paragraph with respect to the interest receivable, as well as their or its name

and their domicile or residence or the location of its head office or principal office, each of which is located outside Japan, and any other matters specified by Order of the Ministry of Finance (hereinafter referred to in this Article as a "written application for a tax exemption"), via the person who pays the interest (in the case where the interest is paid via a person in charge of handling payment specified by Cabinet Order (hereinafter referred to in this paragraph, paragraph (7) and paragraph (11) as a "person in charge of handling payment"), submission is made via the person in charge of handling payment and the person who pays the interest), to the competent district director with jurisdiction over the place for tax payment pursuant to the provisions of Article 17 of the Income Tax Act which pertains to the person who makes payment in terms of the interest (in the case where another place has been designated pursuant to the provisions of Article 18, paragraph (2) of the Act: the designated place for tax payment), income tax is not imposed on the interest to be received; provided, however, that this does not apply to such interest to be paid to a nonresident with a permanent establishment in Japan, which is attributed to a business conducted by such nonresident or which is otherwise specified by Cabinet Order.

- (5) The provisions of Article 212 of the Income Tax Act do not apply to the interest prescribed in the proviso of the preceding paragraph.
- (6) In the case referred to in paragraph (4), where a written application for a tax exemption has been submitted to the district director of the tax office prescribed in the paragraph, it is deemed that the submission to the district director of the tax office has been made when the written application has been received by the person who pays the interest prescribed in the paragraph.
- (7) Where a nonresident or foreign corporation receives payment of interest on general foreign private bonds issued during the period from April 1, 1998, to March 31, 2010, which fall under the category of specified foreign private bonds and for which the nonresident or foreign corporation has, pursuant to the provisions of Cabinet Order, entrusted custody with the person in charge of handling payment, if [1] the person in charge of handling payment thus entrusted with custody (hereinafter referred to in this paragraph as the "person in charge of handling custody and payment") who provides intermediary, brokerage or agent services (hereinafter referred to in this paragraph as the "intermediary services, etc.") for the receipt of interest on the specified foreign private bonds has, before receiving the delivery of such interest in the course of the intermediary services, etc., given notice of the matters specified in each of the following items for the category listed in the relevant item and any other matters specified by Order of the Ministry of Finance with respect to the person who is to receive the interest (excluding interest subject to the provisions of Article 3-3, paragraph (3) or paragraph (6));

hereinafter the same applies in this paragraph) (these matters hereinafter referred to in this paragraph and paragraph (14) as "interest recipient information"), to the person who pays the interest (in the case where the interest is delivered via another person in charge of handling payment with whom the person in charge of handling custody and payment has further entrusted custody, notice is given to the person who pays the interest via such other person in charge of handling payment), and [2] the person who pays the interest has, upon payment of the interest, prepared a document stating the matters concerning the person who is to receive the interest and any other matters specified by Order of the Ministry of Finance (limited to a document prepared based on the information on the interest recipient provided by the person in charge of handling custody and payment; referred to in paragraph (9) and paragraph (14) as the "document identifying the interest recipient"), and submitted it to the competent district director with jurisdiction over the place for tax payment prescribed in Article 17 of the Income Tax Act which pertains to the person who makes payment in terms of the interest (in the case where another place has been designated pursuant to the provisions of Article 18, paragraph (2) of the Act: the designated place for tax payment), the nonresident or foreign corporation is deemed to have submitted a written application for a tax exemption pursuant to the provisions of paragraph (4) with respect to the interest receivable thereby:

- (i) where all persons who are to receive payment of the interest are nonresidents or foreign corporations: This fact; or
- (ii) where there is a resident(s) or domestic corporation(s) among the persons who are to receive payment of the interest: The total amount receivable by the nonresidents and foreign corporations who are to receive the interest.

(8) The provisions of the main clause of paragraph (4) and the provisions of the preceding two paragraphs apply mutatis mutandis where a financial institution or financial instruments business operator specified by Cabinet Order (limited to a domestic corporation; referred to in the following paragraph as a "domestic financial institution, etc.") receives payment of interest (excluding interest subject to Article 3-3, paragraph (2) or paragraph (6)) on general foreign private bonds issued during the period from April 1, 1998, to March 31, 2010. In this case: in the main clause of paragraph (4), the phrase "their or its name and their domicile or residence or the location of its head office or principal office" is deemed to be replaced with "its name and the location of its head office or principal office"; in paragraph (7), item (i), the phrase "nonresidents or foreign corporations" is deemed to be replaced with "nonresidents or foreign corporations or domestic financial institutions, etc. prescribed in the following paragraph"; in paragraph (7), item (ii), the term "domestic corporation(s)" is deemed to be replaced with "domestic



corporation(s) (excluding a domestic financial institution(s), etc. prescribed in the following paragraph," and the phrase "foreign corporation(s)" is deemed to be replaced with "domestic corporation(s) and domestic financial institution(s), etc. prescribed in the paragraph."

(9) Specified foreign private bonds prescribed in paragraph (7) mean general foreign private bonds that satisfy the following requirements:

(i) in the underwriting contract, etc. (meaning a contract for underwriting, dealings in a public offering or secondary distribution, or any other operations equivalent thereto pertaining to the issue of bonds (hereinafter referred to in this item as "underwriting, etc.")) concluded by the person who issues the general foreign private bonds, it is provided that the person who performs the underwriting, etc. must not pressure any resident or domestic corporation (excluding a domestic financial institution, etc.) into acquiring or buying the general foreign private bonds by way of public offering or secondary distribution, dealings in a public offering or secondary distribution, or any other operations equivalent thereto under the underwriting contract, etc.; and

(ii) in the certificates of the general foreign private bonds and the prospectus pertaining to the issuance thereof (in the case where no certificates have been issued for the general foreign private bonds, in the prospectus pertaining to the issuance of the general foreign private bonds), it is stated that where a resident or domestic corporation receives payment of interest on the general foreign private bonds (where a domestic financial institution, etc. receives payment, the case where it has submitted a written application for a tax exemption pursuant to the provisions of the main clause of paragraph (4) and the provisions of paragraph (6) as applied mutatis mutandis pursuant to the preceding paragraph or where the person who pays interest on the general foreign private bonds has submitted a document identifying the interest recipient pursuant to the provisions of paragraph (7) as applied mutatis mutandis pursuant to the preceding paragraph is excluded), income tax is imposed on any interest on the amount specified in (a) or (b) below for the category listed in (a) or (b) respectively:

(a) where a resident or domestic corporation receives payment (excluding the case listed in (b)): The amount receivable; or

(b) where a public corporation, etc. prescribed in Article 3-3, paragraph (6) or a financial institution or financial instruments business operator, etc. receives payment via a person in charge of handling payment in Japan as prescribed in the paragraph (limited to the case where any of these has submitted a written application prescribed in the paragraph): The amount receivable, after deducting therefrom the amount specified by Cabinet Order prescribed in the paragraph.

- (10) Income tax is not imposed with respect to any interest to be received by a nonresident or foreign corporation on designated foreign private bonds issued during the period from April 1, 1998, through March 31, 2010 (excluding those issued by a foreign corporation specified by Cabinet Order as prescribed in paragraph (4)); provided, however, that this does not apply to such interest to be paid to a nonresident with a permanent establishment in Japan, which is attributed to a business conducted by such nonresident or which is otherwise specified by Cabinet Order.
- (11) Designated foreign private bonds as prescribed in the preceding paragraph mean foreign private bonds issued in a state designated by Cabinet Order where due to the laws or regulations enforced or practices accepted therein, the person in charge of handling the payment of interest is not allowed to disclose information on the person who is to receive payment and the fact that such disclosure is not allowed is found to be recognized internationally (hereinafter referred to in this paragraph as a "designated state"), which satisfy the requirement that interest thereon is to be paid in the relevant designated state and any other requirements specified by Cabinet Order.
- (12) The provisions of Article 212 of the Income Tax Act do not apply to the interest prescribed in the proviso of paragraph (10).
- (13) The provisions of the preceding paragraphs apply mutatis mutandis to foreign-denominated bonds (limited to foreign-denominated bonds as prescribed in Article 2, paragraph (1) and Article 4 of the Act on the Issuance of Foreign-Denominated Government Bonds (Act No. 63 of 1963), which are issued outside Japan and interest on which is paid outside Japan) issued during the period from April 1, 1998, to March 31, 2010. In this case, the phrase "Article 6, paragraph (1) of the Act on Special Measures Concerning Taxation (Special Provisions on Taxation on Interest from Foreign Private Bonds)" in paragraph (3) is deemed to be replaced with "Article 6, paragraph (1) of the Act on Special Measures Concerning Taxation as applied mutatis mutandis pursuant to Article 6, paragraph (13) (Special Provisions on Taxation on a Foreign-Denominated Bonds)."
- (14) Beyond what is specified in paragraph (3), the procedure for confirmation of the matters stated in a written application for a tax exemption and any other matters concerning the submission of a written application for a tax exemption, matters concerning a notice of the interest recipient information as well as preservation and management of such information provided in the notice, special provisions for omitting a notice in the case where there is no change in the interest recipient information provided in the previous notice, matters concerning the submission of an document identifying the interest recipient, matters concerning documents to be attached to a tax return which is filed by a person who has been subject to the collection of income tax pursuant to the

provisions of paragraph (2) with respect to interest on general foreign private bonds, and other necessary matters concerning the application of the provisions of paragraph (1), paragraph (2), and paragraph (4) to the preceding paragraph are specified by Cabinet Order.

(Tax Exemption on Interest on Deposits. Managed in a Special International Financial Transactions Account)

Article 7 Where a financial institution prescribed in paragraph (3) of Article 21 of the Foreign Exchange and Foreign Trade Act (Act No. 228 of 1949) has received deposits or borrowings on or after April 1, 1998, from a foreign corporation that has been certified, pursuant to the provisions of Order of the Ministry of Finance, as falling under the category of nonresident prescribed in the paragraph, and has managed such deposits or borrowings in a special international financial transactions account prescribed in the paragraph (hereinafter referred to in this Article as a "special international financial transactions account"), income tax is not imposed with respect to any interest on the deposits or borrowings paid to the foreign corporation; provided, however, that where any event has occurred that is in violation of the provisions of Cabinet Order established pursuant to the provisions of Article 21, paragraph (4) of the Act, which pertains to the matters concerning the settlement of a special international financial transactions account, the provisions of the main clause of this Article do not apply to such interest pertaining to the accounting period that includes the day on which such event has occurred.

(Non-Application of Withholding at the Source to Interest Income Received by Financial Institutions)

Article 8 (1) The provisions of Article 174, Article 175, Article 178, Article 179, and Article 212, paragraphs (1) through (3) of the Income Tax Act do not apply to the following interest on government or company bonds, deposits or savings, or to distributions of proceeds from a jointly managed money trust or public and corporate bond investment trust (limited to an investment trust operated without instruction from the settlor as prescribed in Article 2, paragraph (2) of the Act on Investment Trusts and Investment Corporations; referred to in item (iii) as a "specified public and corporate bond investment trust"), which is received by a bank with business offices in Japan and any other financial institution specified by Cabinet Order (hereinafter referred to in this Article as a "financial institution"):

(i) interest on government or company bonds which is entered or recorded in a transfer account book as prescribed in the Act on the Book-Entry Transfer of Company Bonds, Shares (referred to in item (iii) as a "transfer account book")

- (such interest excludes the interest on entered or recorded government or company bonds of a financial institution that is engaged in a trust business as prescribed in Article 1, paragraph (1) of the Act on Additional Operation of Trust Business by Financial Institutions (Act No. 43 of 1943) under the Act and which is specified by Cabinet Order) and which accrued within the period during which it was entered or recorded;
- (ii) interest on deposits or savings at a financial institution (excluding the interest specified by Cabinet Order); and
  - (iii) distribution of proceeds from a jointly managed money trust or specified public and corporate bond investment trust, with a financial institution as both a settlor and a beneficiary, which accrued within the period of the entrustment (for distribution of proceeds from a loan trust or specified public and corporate bond investment trust, within the period during which the beneficiary certificate (including rights to be indicated thereon) of the loan trust or specified public and corporate bond investment trust continued to be registered or was entered or recorded in a transfer account book).
- (2) The provisions of Article 174, Article 175, Article 178, Article 179, and Article 212, paragraphs (1) through (3) of the Income Tax Act do not apply to interest on government or company bonds which is received by a financial instruments business operator, a financial instruments clearing organization, or a securities finance company specified by Cabinet Order (referred to in the following paragraph and paragraph (5) as a "financial instruments business operator, etc.") and which is listed in item (i) of the preceding paragraph.
- (3) The provisions of Article 174, Article 175, and Article 212, paragraph (3) of the Income Tax Act do not apply to interest on government or company bonds which is specified by Cabinet Order as interest to be received by a domestic corporation (excluding a financial institution, financial instruments business operator, etc., and any other corporation specified by Cabinet Order and limited to a domestic corporation which is specified by Cabinet Order as a principal trader of government or company bonds; the same applies in paragraph (5)) and which is listed in paragraph (1), item (i).
- (4) Where a financial institution receives payment of interest or distribution of proceeds prescribed in paragraph (1), item (i) or item (iii), it must submit a detailed statement that separates the portion of the interest or distribution of proceeds which is subject to the provisions of the paragraph and the other portion, to the competent district director with jurisdiction over the place of the payment, via the person in charge of handling payment, as specified by Order of the Ministry of Finance.
- (5) The provisions of the preceding paragraph apply mutatis mutandis in the case where a financial instruments business operator, etc. or a domestic corporation receives payment of interest prescribed in paragraph (1), item (i). In this case,

the term "the provisions of the paragraph" in the preceding paragraph is deemed to be replaced with "the provisions of paragraph (2) or the preceding paragraph."

- (6) Necessary matters concerning the period during which the relevant information was entered or recorded, the period of the entrustment, or the period of registration, and the calculation of the amount of the portion that has accrued within these periods are specified by Order of the Ministry of Finance.

#### **Section 4 Timber Income and Capital Gains**

##### **Subsection 9 Special Provisions on Taxation on Income from the Transfer of Securities**

(Special Provisions on Taxation on Income from the Transfer of Government or Company Bonds)

Article 37-15 (1) Income tax is not imposed on the following income:

- (i) income from transfer of government or company bonds (excluding the bonds with share options prescribed in Article 37-10, paragraph (2), item (iii)), beneficiary rights of a bond investment trust, a bond management investment trust, or a loan trust, and the company bond-type beneficial rights prescribed in Article 8-2, paragraph (1), item (ii) (referred to in item (i) of the following paragraph as "government or company bonds, etc.") (such transfer excludes transfer of company bonds pertaining to the company bonds with share options listed in Article 57-4, paragraph (3), item (iv) of the Income Tax Act due to grounds specified in the item; the same applies in item (i) of the following paragraph); and
- (ii) where the smaller amount between the amount to be paid to a person who has the beneficiary rights of a bond investment trust, a bond management investment trust, or a special purpose trust (hereinafter referred to in this item and item (ii) of the following paragraph as a "bond investment trust, etc.") as a result of the termination of the bond investment trust, etc. or the cancellation of a part of the bond investment trust, etc. (for beneficiary rights of a special purpose trust, limited to company bond-type beneficial rights as prescribed in Article 8-2, paragraph (1), item (ii); hereinafter the same applies in this item and item (ii) of the following paragraph) and the part of the amount entrusted to the bond investment trust, etc. (for an open-end securities investment trust as prescribed in Article 2, paragraph (1), item (xiv) of the Income Tax Act, the part of the amount that remains after deducting the amount to be appropriated for the distribution of proceeds listed in Article 9, paragraph (1), item (xi) of the Act; the same applies in item (ii) of the following paragraph) that pertains to the beneficiary rights exceeds the amount spent for acquiring the beneficiary rights, the amount of

the excess.

- (2) The following amounts are disregarded with regard to the application of the provisions of the Income Tax Act:
- (i) where the amount of income from the transfer of government or company bonds is less than the sum of the acquisition cost and the expenses required for the transfer thereof as prescribed in Article 33, paragraph (3) of the Income Tax Act, or is less than the necessary expenses for the transfer thereof, the amount of the shortfall; and
  - (ii) where the smaller amount between the amount to be paid to a person who has the beneficiary rights of a bond investment trust, etc. set forth in item (ii) of the preceding paragraph due to grounds prescribed in the item and the part of the amount entrusted to the bond investment trust, etc. that pertains to the beneficiary rights is less than the amount spent for acquiring the beneficiary rights, the amount of the shortfall.

**Section 4-2 Special Provisions on Taxation on Income from the Specified Foreign Subsidiary of a Resident**  
**Subsection 1 Special Provisions on Taxation on Income from the Specified Foreign Subsidiary of a Resident**

(Inclusion in Gross Revenue of Retained Income of the Specified Foreign Subsidiary, of a Resident)

Article 40-4 (1) Where the foreign affiliate of any of the following residents, which falls under the category of a foreign affiliate specified by Cabinet Order as a company whose tax burden to be imposed on its income earned in a state or territory where its head office or principal office is located is significantly lower than the tax burden to be imposed on the income of a corporation in Japan (hereinafter referred to in this Subsection as a "specified foreign subsidiary, etc."), in each business year (meaning a business year prescribed in Article 2, paragraph (2), item (xix); hereinafter the same applies in this Article) beginning on or after April 1, 1978, retains as part of the amount of undistributed income, pursuant to the provisions of Cabinet Order, any amount that is adjusted, with respect to the amount of undistributed income, based on the tax amount pertaining to the amount of undistributed income and the amount of dividend of surplus, dividend of profit or distribution of surplus prescribed in Article 23, paragraph (1), item (i) of the Corporation Tax Act (hereinafter referred to in this paragraph and the following paragraph as "dividend of surplus, etc.") (such adjusted amount hereinafter referred to in this Article as "eligible retained income"), the amount equivalent to the part of eligible retained income which is calculated pursuant to the method specified by Cabinet Order as the amount of income corresponding to the number of

- shares, etc. of the specified foreign subsidiary, etc. held by the resident through direct and/or indirect ownership, while taking into consideration the contents of the claim (meaning a claim to demand dividend of surplus, etc., distribution of property and any other economic benefit; hereinafter the same applies in this paragraph and the following paragraph) vested in such shares, etc. (meaning shares or capital contributions; the same applies in this paragraph and the following paragraph) (such part of eligible retained income hereinafter referred to as "taxable retained income" in the following Article) is deemed to be the resident's revenue categorized as miscellaneous income, and included in their gross revenue in the calculation of the amount of their miscellaneous income for the year that includes the day on which two months have elapsed since the day following the last day of the relevant business year:
- (i) a resident who holds shares, etc. of the foreign affiliate through direct and/or indirect ownership, the ratio of whose shares, etc. to the total number or total amount of issued shares of or capital contributions to the foreign affiliate (excluding the shares, etc. held by the foreign affiliate) (in the case where the foreign affiliate is a corporation listed in (a) through (c): the ratio or the ratio listed in (a) through (c), whichever is larger; referred to in the following item as the "direct and/or indirect ownership ratio for shares, etc. of a foreign affiliate") is five percent or more:
    - (a) a corporation that issues shares, etc. in which more than one voting right (limited to a voting right pertaining to a resolution on dividend of surplus, etc.; hereinafter the same applies in this item and the following paragraph) is vested (excluding a corporation listed in (c)): The ratio of the number of voting rights in the foreign affiliate held by the resident through direct and/or indirect ownership to the total number of voting rights in the foreign affiliate;
    - (b) a corporation that issues shares, etc. in which different claims are vested (excluding a corporation listed in (c)): The ratio of the amount of dividend of surplus, etc. based on the claim for the foreign affiliate held by the resident through direct and/or indirect ownership to the total amount of dividend of surplus, etc. receivable based on the claims vested in the shares, etc. of the foreign affiliate; or
    - (c) a corporation that issues both shares, etc. in which more than one voting right is vested and shares, etc. in which different claims are vested: The ratio specified in (a) or the ratio specified in (b), whichever is larger.
  - (ii) a resident who belongs to a family shareholder group whose direct and/or indirect ownership ratio for shares, etc. of the foreign affiliated company is five percent or more (excluding the resident listed in the preceding item).
- (2) In the preceding paragraph and this paragraph, the meanings of the terms listed in the following items are as prescribed respectively in those items:

- (i) foreign affiliate: A foreign corporation in which the ratio of the sum of the number or amount of shares, etc. held through direct and/or indirect ownership by residents, domestic corporations, and specially-related nonresidents (meaning nonresidents who have a special relationship specified by Cabinet Order with residents or domestic corporations; hereinafter the same applies in this item) to the total number or total amount of issued shares or capital contributions (excluding the shares, etc. held by the foreign corporation) (in the case where the foreign corporation is a corporation listed in (a) through (c): the ratio or the ratio listed in (a) through (c), whichever is larger) is more than 50 percent:
  - (a) a corporation that issues shares, etc. in which more than one voting right is vested (excluding a corporation listed in (c)): The ratio of the sum of the number of voting rights in the foreign corporation held through direct and/or indirect ownership by residents, domestic corporations and specially-related nonresidents to the total number of voting rights in the foreign corporation;
  - (b) a corporation that issues shares, etc. in which different claims are vested (excluding a corporation listed in (c)): The ratio of the sum of the amount of dividend of surplus, etc. based on the claims for the foreign corporation held through direct and/or indirect ownership by residents, domestic corporations and specially-related nonresidents to the total amount of dividend of surplus, etc. receivable based on the claims vested in the shares, etc. of the foreign corporation; or
  - (c) a corporation that issues both shares, etc. in which more than one voting right is vested and shares, etc. in which different claims are vested: The ratio specified in (a) or the ratio specified in (b), whichever is larger.
- (ii) amount of undistributed income: An amount adjusted, with respect to the amount of income of a specified foreign subsidiary, etc. in its settlement of accounts for each business year, pursuant to the method specified by Cabinet Order, based on the amount calculated in accordance with the standards specified by Cabinet Order in a manner equivalent to the manner for calculating the amount of income for each business year pursuant to the Corporation Tax Act and this Act, in terms of the amount of loss incurred in each of the business years that commenced within seven years before the first day of the relevant business year;
- (iii) number of shares, etc. (held) through direct and/or indirect ownership: The sum of the number of shares of or amount of capital contributions to a foreign corporation held directly by an individual or domestic corporation and the number of shares of or amount of capital contributions to the foreign corporation specified by Cabinet Order as being held indirectly by the individual or domestic corporation via another foreign corporation;



- (iv) number of voting rights (held) through direct and/or indirect ownership:  
The sum of the number of voting rights in a foreign corporation held directly by an individual or domestic corporation and the number of voting rights in the foreign corporation specified by Cabinet Order as being held indirectly by the individual or domestic corporation via another foreign corporation;
  - (v) amount of dividend of surplus, etc. based on the claims (held) through direct and/or indirect ownership: The sum of the amount of dividend of surplus, etc. receivable based on the claims in the shares, etc. of a foreign corporation held directly by an individual or domestic corporation and the amount of dividend of surplus, etc. receivable based on the claims in the shares, etc. of the foreign corporation specified by Cabinet Order as being held indirectly by the individual or domestic corporation via another foreign corporation; and
  - (vi) family shareholder group: Among a group of persons who directly or indirectly hold shares, etc. in a foreign affiliate, those persons (excluding a foreign corporation) to which a resident or domestic corporation has a special relationship specified by Cabinet Order.
- (3) With regard to the application of the provisions of paragraph (1) in the case where a specified foreign subsidiary, etc. to which a resident listed in each item of paragraph (1) is connected (excluding a company engaged in, as its principal business, the holding of shares (including capital contributions) or bonds, the provision of industrial property rights or any other rights concerning technology, production methods involving special technology or any other equivalent rights or methods (including the right to use these rights) or copyrights (including rights of publication, neighboring rights and any other equivalent rights) or the lending of vessels or aircrafts) has an office, store, factory or any other fixed facility that is considered to be necessary for conducting its principal business in the state or territory where its head office or principal office is located, and takes charge of managing, controlling and operating the business by itself (referred to in the following paragraph as the "case where a specified foreign subsidiary, etc. has a fixed facility"), the phrase "amount that is adjusted" in the paragraph is deemed to be replaced with "amount that is adjusted,..., after deducting therefrom the amount equivalent to ten percent of the amount of expense specified by Cabinet Order as a personnel expense for people engaged in the business at the specified foreign subsidiary, etc."
- (4) Where a specified foreign subsidiary, etc. prescribed in the preceding paragraph that is the subsidiary of a resident listed in each item of paragraph (1) has a fixed facility in the State or territory where its head office or principal office is located, and falls under any of the cases listed in the following items depending on the type of business listed in the following items to which its principal business corresponds in each business year, the

provisions of paragraph (1) and the preceding paragraph do not apply to the eligible retained income of the specified foreign subsidiary, etc. for the relevant business year:

- (i) wholesale business, banking business, trust business, financial instruments business, insurance business, water transportation business or air transportation business: The case specified by Cabinet Order in which the specified foreign subsidiary, etc. conducts business mainly with a person other than [1] a resident listed in each item of paragraph (1) who is the resident to which the specified foreign subsidiary, etc. pertains, [2] a domestic corporation listed in each item of Article 66-6, paragraph (1) that is the domestic corporation of the specified foreign subsidiary, etc., [3] a consolidated corporation listed in each item of Article 68-90, paragraph (1) that is to the consolidated corporation of the specified foreign subsidiary, etc. or [4] any other person specified by Cabinet Order as being equivalent to the persons mentioned in [1] through [3]; or
  - (ii) business other than those listed in the preceding item: The case specified by Cabinet Order in which the specified foreign subsidiary, etc. conducts a business mainly in the state or territory where its head office or principal office is located (including the water areas belonging to the State or territory which are specified by Cabinet Order).
- (5) A resident listed in each item of paragraph (1) must attach a balance sheet and profit and loss statement for each business year regarding the specified foreign subsidiary, etc. of the resident as well as any other documents specified by Order of the Ministry of Finance, to their tax return for the year that includes the day on which two months have elapsed since the day following the last day of the relevant business year.
- (6) The provisions of paragraph (3) and paragraph (4) apply only where the resident has attached, to their tax return, a document stating that these provisions are to apply, and preserved documents or any other materials that certify that these provisions are to apply.
- (7) Where a resident holds, directly or indirectly, a beneficial right of a foreign trust (meaning a foreign investment trust prescribed in Article 2, paragraph (22) of the Act on Investment Trusts and Investment Corporations, which is similar to a specified investment trust prescribed in Article 68-3-3, paragraph (1); hereinafter the same applies in this paragraph), the trustee of the foreign trust is deemed to be a different person for each of the trust assets, etc. under the foreign trust (meaning assets and liabilities included in the trust property and profits and expenses attributed to the trust property; hereinafter the same applies in this paragraph) and the trustee's own assets, etc. (meaning the trustee's assets and liabilities as well as profits and expenses other than those included in the trust assets, etc. under the foreign trust), and the provisions of

this Article (excluding paragraph (3), paragraph (4) and the preceding paragraph) to Article 40-6 are applied thereto.

(8) The provisions of Article 4-6, paragraph (2) and Article 4-7 of the Corporation Tax Act apply mutatis mutandis in the case where the provisions of the preceding paragraph apply.

Article 40-5 (1) Where an event listed in item (i) or item (ii) has occurred with regard to a specified foreign subsidiary, etc. of a resident who is subject to the provisions of paragraph (1) of the preceding Article with respect to its income tax for the relevant year and each year before the relevant year, or where an event listed in item (iii) has occurred with regard to a foreign affiliate prescribed in paragraph (2), item (i) of the Article (limited to a foreign affiliate that has received, from the specified foreign subsidiary, etc., payment of dividend of surplus, dividend of profit or distribution of surplus prescribed in Article 23, paragraph (1), item (i) of the Corporation Tax Act (hereinafter referred to in this paragraph as "dividend of surplus, etc.") (such payment includes the delivery listed in item (ii) of the amount specified in the item), which is specified by Cabinet Order; hereinafter the same applies in this Article) that is the foreign affiliate of the resident, if the amount prescribed in each item contains any amount calculated pursuant to the method specified by Cabinet Order as being appropriated from the taxable retained income pertaining to the resident (such amount hereinafter referred to in this Article as "taxed amount of dividend, etc."), the amount equivalent to the taxed amount of dividend, etc., pursuant to the provisions of Cabinet Order, be deducted when calculating the amount of dividend income pertaining to the amount of dividend of surplus, etc. to be received by the resident from the specified foreign subsidiary, etc. or foreign affiliated company for the year that includes the day on which the relevant event has occurred (including any amount that is deemed to be dividend of surplus, etc. from the specified foreign subsidiary, etc. or the foreign affiliate pursuant to the provisions of Article 25, paragraph (1) of the Income Tax Act; hereinafter referred to in this Article and the following Article as the "amount of dividend, etc." ) or calculating the amount of miscellaneous income pertaining to the taxable retained income to be included in the resident's gross income pursuant to the provisions of paragraph (1) of the preceding Article:

- (i) payment of dividend of surplus, etc.: The amount of dividend of surplus, etc. to be paid;
- (ii) delivery of money or any other assets by reason of the occurrence of any of the events listed in the items of Article 24, paragraph (1) of the Corporation Tax Act: The amount equivalent to the amount of revenue reserves (meaning the amount of revenue reserves prescribed in Article 2, paragraph (2), item

- (xx); the same applies in the following item) which is to be decreased due to the delivery;
- (iii) payment of dividend of surplus, etc. to the resident or delivery of money or any other assets to the resident by reason of the occurrence of any of the events listed in the items of Article 24, paragraph (1) of the Corporation Tax Act: The amount equivalent to the amount of revenue reserves which is to be decreased due to the amount of dividend of surplus, etc. to be paid or the delivery; and
- (iv) payment of distribution of profit to the resident: The amount of distribution of profit to be paid.
- (2) Where the amount equivalent to the taxed amount of dividend, etc. of the resident prescribed in the preceding paragraph for each of the three years preceding the relevant year contains any amount that remains after making deduction pursuant to the provisions of the paragraph (excluding any amount deducted for each of these years pursuant to the provisions of this paragraph; hereinafter referred to in this paragraph as the "remaining amount of dividend, etc. after deduction"), the remaining amount of dividend, etc. after deduction, pursuant to the provisions of Cabinet Order, is deducted when calculating the amount of dividend income pertaining to the amount of dividend of surplus, etc. to be received by the resident from the specified foreign subsidiary, etc. or foreign affiliated company for the relevant year or calculating the amount of miscellaneous income pertaining to the taxable retained income to be included in the resident's gross income pursuant to the provisions of paragraph (1) of the preceding Article.
- (3) The provisions of paragraph (1) and the preceding paragraph applies only where the resident has filed a tax return for the year prescribed in paragraph (1) or has continued to file the tax return as well as tax returns for the subsequent years from the year following the year until the year in which the resident seeks the application of the provisions of the preceding paragraph, and the resident has stated, in their tax return for the year prescribed in paragraph (1) as well as tax returns for the subsequent years, the deduction of the deductible amounts pursuant to the provisions of the paragraph or the preceding paragraph, and attached thereto a written statement concerning the deductible amounts as well as the calculation of the amount of dividend income pertaining to the amount of dividend, etc. to be received from the specified foreign subsidiary or foreign affiliate and the amount of miscellaneous income pertaining to the taxable retained income to be included in the resident's gross income, both of which are prescribed in paragraph (1) and the preceding paragraph. In this case, the amount to be deducted pursuant to the provisions of paragraph (1) or the preceding paragraph is limited to the amount stated as such amount to be deducted.

(4) Even where a resident has not filed a tax return for the year for which they seek deduction pursuant to the provisions of paragraph (1) or paragraph (2) or has filed a tax return without a statement made therein or written statement attached thereto regarding the whole or part of the amount to be deducted, the district director may, when they find any unavoidable reason for the resident's failure to file a necessary tax return, make a necessary statement therein or attach a necessary written statement thereto, apply the provisions of paragraph (1) or paragraph (2) to any amount for which the statement or written statement set forth in the paragraph has not been made or attached, only if a document containing the statement set forth in the paragraph and a written statement set forth in the paragraph are submitted.

Article 40-6 Matters concerning the determination as to whether or not a resident falls under any of the categories listed in the items of Article 44-4, paragraph (1), the calculation of the maximum amount of deduction prescribed in Article 95, paragraph (1) of the Income Tax Act with regard to the amount of dividend, etc. that a resident receives from a specified foreign subsidiary, etc. of the resident, and other necessary matters concerning the application of the provisions of the preceding two Articles are specified by Cabinet Order.

**Subsection 3 Special Provisions on Taxation the Income of the  
Specified Foreign Corporations of a Resident Who Is a Specially-  
Related Shareholder**

(Inclusion in Gross Revenue of the Retained Income of the Specified Foreign  
Corporations of a Resident Who Is a Specially-Related Shareholder)

Article 40-10 (1) Where, between a specially-related shareholder, etc. (meaning a person who falls under the category of specified shareholder, etc. as well as an individual and a corporation with a special relationship thereto as specified by Cabinet Order; hereinafter the same applies in this Subsection) and a specially-related domestic corporation, there is a relationship specified by Cabinet Order as a relationship whereby the specially-related shareholder, etc. indirectly holds shares, etc. (meaning shares or capital contributions; hereinafter the same applies in this paragraph and the following paragraph) that accounts for 80 percent or more of the total number or total amount of issued shares of or capital contributions to the specially-related domestic corporation (excluding the shares or capital contributions held by the corporation; hereinafter referred to in this paragraph and the following paragraph as "issued shares, etc.") (such relationship referred to in the following paragraph as a "specified relationship"), and a foreign corporation specified by Cabinet Order as acting as an intermediary between the specially-

related shareholder, etc. and the specially-related domestic corporation by way of the holding of the issued shares, etc. (hereinafter referred to in this Subsection as an "affiliated foreign corporation"), which falls under the category of affiliated foreign corporation specified by Cabinet Order as a corporation whose tax burden to be imposed on its income earned in a state or territory where its head office or principal office is located is significantly lower than the tax burden to be imposed on the income of a corporation in Japan (hereinafter referred to in this Subsection as a "specified foreign corporation"), in each business year (meaning a business year prescribed in Article 2, paragraph (2), item (xix); hereinafter the same applies in this Article) beginning on or after October 1, 2007, retains as part of the amount of undistributed income, pursuant to the provisions of Cabinet Order, any amount that is adjusted, with respect to the amount of undistributed income, based on the tax amount pertaining to the amount of undistributed income and the amount of dividend of surplus, dividend of profit or distribution of surplus prescribed in Article 23, paragraph (1), item (i) of the Corporation Tax Act (hereinafter referred to in this paragraph as "dividend of surplus, etc.") (such adjusted amount hereinafter referred to in this Article as "eligible retained income"), the amount equivalent to the part of eligible retained income which is calculated pursuant to the method specified by Cabinet Order as the amount of income corresponding to the number of shares, etc. of the specified foreign corporation held by the resident who is the specially-related shareholder, etc. through direct and/or indirect ownership, while taking into consideration the contents of the claim (meaning a claim to demand dividend of surplus, etc., distribution of property and any other economic benefit) vested in such shares, etc. (such part of eligible retained income referred to in the following Article as "taxable retained income") is deemed to be the revenue of the resident who is the specially-related shareholder, etc. categorized as miscellaneous income, and included in their gross revenue in the calculation of the amount of their miscellaneous income for the year that includes the day on which two months have elapsed since the day following the last day of the relevant business year:

(2) In this Subsection, the meanings of the terms listed in the following items are as prescribed respectively in those items:

(i) specified shareholder, etc.: An individual and corporation holding, at the time immediately before a specified relationship is established, shares, etc. of a specified domestic corporation (meaning a domestic corporation wherein not more than five shareholders, etc. (meaning shareholders, etc. prescribed in Article 2, paragraph (1), item (viii)-2 of the Income Tax Act) as well as individuals and corporations that have a special relationship thereto as specified by Cabinet Order hold shares, etc. that account for 80 percent or more of the total number or total amount of its issued shares, etc. at that

- time; the same applies in the following item);
- (ii) specially-related domestic corporation: A specified domestic corporation, or a domestic corporation specified by Cabinet Order as a corporation that has received the transfer of the majority of assets and liabilities from a specified domestic corporation;
  - (iii) amount of undistributed income: An amount adjusted, with respect to the amount of income of a specified foreign corporation in its settlement of accounts for each business year, pursuant to the method specified by Cabinet Order, based on the amount calculated in accordance with the standards specified by Cabinet Order in a manner equivalent to the manner for calculating the amount of income for each business year pursuant to the Corporation Tax Act and this Act, in terms of the amount of loss incurred in each of the business years that commenced within seven years before the first day of the relevant business year; and
  - (iv) number of shares, etc. held through direct and/or indirect ownership: The sum of the number of shares of or amount of capital contributions to a foreign corporation held directly by a resident or domestic corporation and the number of shares of or amount of capital contributions to the foreign corporation specified by Cabinet Order as being held indirectly by the individual or domestic corporation via another foreign corporation.
- (3) With regard to the application of the provisions of paragraph (1) in the case where a specified foreign corporation of a resident who is a specially-related shareholder, etc. (excluding a corporation engaged in, as its principal business, the holding of shares (including capital contributions) or bonds, the provision of industrial property rights or any other rights concerning technology, production methods involving special technology or any other equivalent rights or methods (including the right to use these rights) or copyrights (including rights of publication, neighboring rights and any other equivalent rights) or the lending of vessels or aircrafts) has an office, store, factory or any other fixed facility that is considered to be necessary for conducting its principal business in the state or territory where its head office or principal office is located, and takes charge of managing, controlling and operating the business by itself (referred to as the "case where a specified foreign corporation has a fixed facility" in the following paragraph), the phrase "amount that is adjusted" in the paragraph is deemed to be replaced with "amount that is adjusted,...., after deducting therefrom the amount equivalent to ten percent of the amount of expense specified by Cabinet Order as a personnel expense for people engaged in the business at the specified foreign corporation."
- (4) Where a specified foreign corporation prescribed in the preceding paragraph that is the specified foreign corporation of a resident who is a specially-related shareholder, etc. has a fixed facility in the state or territory where its head

office or principal office is located, and falls under any of the cases listed in the following items depending on the type of business listed in the following items to which its principal business corresponds in each business year, the provisions of paragraph (1) and the preceding paragraph do not apply to the eligible retained income of the specified foreign corporation for the relevant business year:

- (i) wholesale business, banking business, trust business, financial instruments business, insurance business, water transportation business or air transportation business: The case specified by Cabinet Order in which the specified foreign corporation conducts business mainly with a person other than [1] a specially-related domestic corporation of the specified foreign corporation, [2] a specially-related shareholder, etc. or [3] any other person specified by Cabinet Order as being equivalent to the persons mentioned in [1] or [2]; or
  - (ii) business other than those listed in the preceding item: The case specified by Cabinet Order in which the specified foreign corporation conducts business mainly in the State or territory where its head office or principal office is located (including the water areas belonging to the State or territory which are specified by Cabinet Order prescribed in Article 40-4, paragraph (4), item (ii)).
- (5) A resident who is a specially-related shareholder, etc. must attach a balance sheet and profit and loss statement for each business year regarding the specified foreign corporation of the resident as well as any other documents specified by Order of the Ministry of Finance, to their tax return for the year that includes the day on which two months have elapsed since the day following the last day of the relevant business year.
- (6) The provisions of paragraph (3) and paragraph (4) apply only where the resident has attached, to their tax return, a document stating that these provisions are to apply, and preserved documents or any other materials that certify that these provisions are to apply.
- (7) The provisions of paragraph (1) do not apply where an affiliated foreign corporation of a resident who is a specially-related shareholder, etc. falls under the category of foreign affiliate prescribed in Article 40-4, paragraph (2), item (i) and the resident who is the specially-related shareholder, etc. falls under the category of resident listed in each item of Article 40-4, paragraph (1).
- (8) Where a resident who is a specially-related shareholder, etc. holds, directly or indirectly, a beneficial right of a foreign trust (meaning a foreign investment trust prescribed in Article 2, paragraph (22) of the Act on Investment Trusts and Investment Corporations, which is similar to a specified investment trust prescribed in Article 68-3-3, paragraph (1); hereinafter the same applies in this paragraph), the trustee of the foreign trust is deemed to be a different person



for each of the trust assets, etc. under the foreign trust (meaning assets and liabilities included in the trust property and profits and expenses attributed to the trust property; hereinafter the same applies in this paragraph) and the trustee's own assets, etc.(meaning the trustee's assets and liabilities as well as profits and expenses other than those included in the trust assets, etc. under the foreign trust), and the provisions of this Article (excluding paragraph (3), paragraph (4) and paragraph (6)) through Article 40-12 are applied thereto.

(9) The provisions of Article 4-6, paragraph (2) and Article 4-7 of the Corporation Tax Act apply mutatis mutandis in the case where the provisions of the preceding paragraph apply.

Article 40-11 (1) Where an event listed in item (i) or item (ii) has occurred with regard to a specified foreign corporation of a resident who is subject to the provisions of paragraph (1) of the preceding Article with respect to its income tax for the relevant year and each year before the relevant year, or where an event listed in item (iii) has occurred with regard to an affiliated foreign corporation (limited to an affiliated foreign corporation that has received, from the specified foreign corporation, payment of dividend of surplus, dividend of profit or distribution of surplus prescribed in Article 23, paragraph (1), item (i) of the Corporation Tax Act (hereinafter referred to in this paragraph as "dividend of surplus, etc.") (such payment includes the delivery listed in item (ii) of the amount specified in the item (ii)), which is specified by Cabinet Order; hereinafter the same applies in this Article) that is the affiliated foreign corporation of the resident, if the amount prescribed in each item contains any amount calculated pursuant to the method specified by Cabinet Order as being appropriated from the taxable retained income pertaining to the resident (such amount hereinafter referred to in this Article as "taxed amount of dividend, etc."), the amount equivalent to the taxed amount of dividend, etc., pursuant to the provisions of Cabinet Order, be deducted when calculating the amount of dividend income pertaining to the amount of dividend of surplus, etc. to be received by the resident from the specified foreign corporation or foreign affiliated corporation for the year that includes the day on which the relevant event has occurred (including any amount that is deemed to be a dividend of surplus, etc. from the specified foreign corporation or the affiliated foreign corporation pursuant to the provisions of Article 25, paragraph (1) of the Income Tax Act; hereinafter referred to in this Article and the following Article as the "amount of dividend, etc." ) or calculating the amount of miscellaneous income pertaining to the taxable retained income to be included in the resident's gross income pursuant to the provisions of paragraph (1) of the preceding Article:

(i) payment of dividend of surplus, etc.: The amount of dividend of surplus, etc.

- to be paid;
- (ii) delivery of money or any other assets by reason of the occurrence of any of the events listed in the items of Article 24, paragraph (1) of the Corporation Tax Act: The amount equivalent to the amount of revenue reserves (meaning the amount of revenue reserves prescribed in Article 2, paragraph (2), item (xx); the same applies in the following item) which is to be decreased due to the delivery;
  - (iii) payment of dividend of surplus, etc. to the resident or delivery of money or any other assets to the resident by reason of the occurrence of any of the events listed in the items of Article 24, paragraph (1) of the Corporation Tax Act: The amount equivalent to the amount of revenue reserves which is to be decreased due to the amount of dividend of surplus, etc. to be paid or the delivery.
- (2) Where the amount equivalent to the taxed amount of dividend, etc. of the resident prescribed in the preceding paragraph for each of the three years preceding the relevant year contains any amount that remains after making deductions pursuant to the provisions of the paragraph (excluding any amount deducted for each of these years pursuant to the provisions of this paragraph; hereinafter referred to in this paragraph as the "remaining amount of dividend, etc. after deduction"), the remaining amount of dividend, etc. after deduction, pursuant to the provisions of Cabinet Order, is deducted when calculating the amount of dividend income pertaining to the amount of dividend of surplus, etc. to be received by the resident from the specified foreign corporation or foreign affiliated corporation for the relevant year or calculating the amount of miscellaneous income pertaining to the taxable retained income to be included in the resident's gross income pursuant to the provisions of paragraph (1) of the preceding Article.
- (3) The provisions of Article 40-5, paragraph (3) and paragraph (4) apply mutatis mutandis in the case where the provisions of the preceding two paragraphs are to apply. In this case, each term or phrase listed in the middle column of the table below that appears in the provisions listed in the left column of the same table is deemed to be replaced with the corresponding term or phrase listed in the right column of the same table.

Article 40-5, paragraph (3)	The provisions of paragraph (1) and the preceding paragraph apply only where the resident has filed a final return form for the year prescribed in paragraph (1)	The provisions of Article 40-11, paragraph (1) or paragraph (2) apply only where the resident has filed a final return form for the year prescribed in paragraph (1) of the said Article
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	the year following the said year until the year in which the resident seeks the application of the provisions of the preceding paragraph	the year following the said year until the year in which the resident seeks the application of the provisions of paragraph (2) of the Article
	final return form for the year prescribed in paragraph (1)	final return form for the year prescribed in paragraph (1) of the said Article
	the paragraph or the preceding paragraph	the said paragraph or paragraph (2) of the Article
	the amount of dividend income pertaining to the amount of dividend, etc. to be received from the specified foreign subsidiary, etc. or foreign affiliate..., both of which are prescribed in paragraph (1) and the preceding paragraph	the amount of dividend income pertaining to the amount of dividend, etc. to be received from the specified foreign corporation or affiliated foreign corporation..., both of which are prescribed in paragraph (1) or (2) of the said Article
	paragraph (1) or the preceding paragraph	paragraph (1) or (2) of the Article
Article 40-5, paragraph (4)	paragraph (1)	Article 40-11, paragraph (1)
	preceding paragraph	preceding paragraph as applied mutatis mutandis pursuant to paragraph (3) of the Article

Article 40-12 Matters concerning the determination as to whether or not there is a specified relationship prescribed in Article 40-10, paragraph (1) between a specially-related shareholder, etc. and a specially-related domestic corporation, the calculation of the maximum amount of deduction prescribed in Article 95, paragraph (1) of the Income Tax Act with regard to the amount of dividend, etc. that a resident receives from a specified foreign corporation of the resident, and other necessary matters concerning the application of the provisions of the preceding two Articles are specified by Cabinet Order.

### **Section 6 Other Special Provisions**

(Separate Taxation for Profit from Redemption)

Article 41-12 (1) With respect to profit receivable by an individual from redemption of discount bonds issued on or after April 1, 1988, notwithstanding the provisions of Article 22, Article 89 and Article 165 of the Income Tax Act, income tax is imposed separately from their other income, by applying a tax rate of 18 percent (or 16 percent for company bonds issued by a Trans-Tokyo Bay Highway constructor prescribed in Article 2, paragraph (1) of the Act on

Special Measures Concerning the Construction of the Trans-Tokyo Bay Highway (Act No. 45 of 1986) with the approval set forth in Article 10, paragraph (1) of the Act and bonds issued by the Organization for Promoting Urban Development prescribed in Article 3, paragraph (1) of the Act on Special Measures Concerning the Promotion of Urban Development with the approval set forth in Article 8, paragraph (3) of the Act, which fall under the category of discount bonds (referred to in the following paragraph and paragraph (3) as "specified discount bonds") to such amount receivable (for profit from redemption of discount bonds issued outside Japan by a foreign corporation, the amount specified by Cabinet Order as that pertaining to the business conducted in Japan by the foreign corporation; the same applies in the following paragraph).

- (2) A domestic corporation or foreign corporation is liable to pay income tax with respect to profit receivable from redemption of discount bonds issued on or after April 1, 1988, and income tax is imposed by applying a tax rate of 18 percent (or 16 percent for profit receivable from redemption of specified discount bonds).
- (3) The issuer (including a person specified by Cabinet Order as being equivalent thereto; the same applies in paragraph (5) and paragraph (6)) of discount bonds issued on or after April 1, 1988, must collect, upon issue of the discount bonds, from the person who is to acquire the bonds, income tax equivalent to the amount calculated by deducting the issue price from the face value of the discount bonds and then multiplying the result (for discount bonds issued outside Japan by a foreign corporation, the amount calculated by multiplying the amount specified by Cabinet Order as that pertaining to the business conducted in Japan by the foreign corporation) by a tax rate of 18 percent (or 16 percent for profit receivable from redemption of specified discount bonds), and pay it to the State no later than the tenth day of the month following the month that includes the date of collection, pursuant to the provisions of Cabinet Order.
- (4) Income tax to be collected and paid pursuant to the provisions of the preceding paragraph is deemed to be withholding at the source as prescribed in Article 2, paragraph (1), item (xlv) of the Income Tax Act, and the provisions of the Act (excluding Part II, Part III, and Part V, Chapter I), the Act on General Rules for National Taxes, and the National Tax Collection Act are applied thereto; where redemption (including retirement by purchase) is made with respect to discount bonds set forth in the preceding paragraph, income tax to be collected pursuant to the provisions of the preceding paragraph, pursuant to the provisions of Cabinet Order, be deemed to be income tax that is to be collected from the acquirer set forth in the paragraph (in the case where the acquirer is not the person who is to receive the redemption: the person who is

to receive the redemption) as income tax on profit from redemption when the acquirer receives the redemption. In this case, where the acquirer is a domestic corporation or foreign corporation, with regard to the application of the provisions of the Corporation Tax Act to the domestic corporation or foreign corporation: in Article 68, paragraph (1), Article 81-14, paragraph (1) and Article 100, paragraph (1) of the Act, the phrase "or prize money" is deemed to be replaced with "or prize money... or profit from redemption prescribed in Article 41-12, paragraph (2) of the Act on Special Measures Concerning Taxation (Separate Taxation, etc. for Profit from Redemption)," and the phrase "the Act" is deemed to be replaced with "the Income Tax Act or the Act on Special Measures Concerning Taxation"; in Article 144 of the Act, "the Income Tax Act" is deemed to be replaced with "the Income Tax Act or the Act on Special Measures Concerning Taxation," and the phrase "the Act" is deemed to be replaced with "the Income Tax Act."

- (5) Where the issuer of discount bonds issued on or after April 1, 1988, redeems the discount bonds by bringing the redemption date forward or retires the discount bonds by purchase prior to the redemption date, the issuer refunds, pursuant to the provisions of Cabinet Order, to the person who is to receive such redemption (including retirement by purchase), part of the amount equivalent to the amount of income tax collected pursuant to the provisions of paragraph (3) and deemed to be income tax set forth in the preceding paragraph.
- (6) Where the issuer of discount bonds issued on or after April 1, 1988, makes payment of profit from redemption of the discount bonds to a domestic corporation prescribed in Article 11, paragraph (1) of the Income Tax Act or a trustee of a charitable trust or participant protection trust prescribed in paragraph (2) of the Article (for payment to a trustee of a charitable trust or participant protection trust: such payment of profit from redemption is limited to payment related to the relevant trust property), the issuer refunds, pursuant to the provisions of Cabinet Order, to the person who is to receive payment, the whole or part of the amount equivalent to the amount of income tax collected pursuant to the provisions of paragraph (3) and deemed to be income tax set forth in paragraph (4) (excluding the amount for which a refund is made pursuant to the provisions of the preceding paragraph).
- (7) Discount bonds prescribed in the preceding paragraphs means government or company bonds (limited to those specified by Cabinet Order) issued by means of a discount, except for those listed in the following, and profit from the redemption prescribed in these paragraphs means margin profit generated when the redemption price of discount bonds (or the purchase price of discount bonds for retirement by purchase) exceeds the issue price thereof:
  - (i) foreign currency denominated bonds prescribed in Article 1, paragraph (1) of

- the Act on the Issuance of Foreign-Denominated Government Bonds that are issued pursuant to the provisions of Article 1, paragraph (1) of the Act or paragraph (3) of the Article (including the cases where it is applied mutatis mutandis pursuant to Article 4 of the Act) (including foreign-denominated bonds prescribed in Article 4 of the Act); and
- (ii) bonds issued by a corporation established under special laws or regulations pursuant to the provisions of the laws or regulations, which are specified by Cabinet Order.
- (8) Beyond what is specified in paragraphs (3) through (6), income from the transfer of discount bonds prescribed in the preceding paragraph that are issued by a foreign corporation and other necessary matters concerning the application of the provisions of paragraph (1) and paragraph (2) are specified by Cabinet Order.
- (9) Where, with respect to government or company bonds issued by means of a discount on or after April 1, 1999, that are listed in the following (including those specified by Cabinet Order as being similar thereto), for which a period from the date of issue to the redemption date is not more than one year (hereinafter referred to in this paragraph as "short-term government or company bonds"), specified entries or records under the book-entry transfer system (meaning entries or records in a transfer account book set forth in the Act on the Book-Entry Transfer of Company Bonds, Shares, etc. which are made pursuant to the provisions of the Act; hereinafter referred to in this Article as "entries or records under the book-entry transfer system"), which are specified by Cabinet Order; hereinafter the same applies in this paragraph) are made together with all other short-term government or company bonds that have the same brand at the time of issue, such short-term government or company bonds for which the specified entries or records under the book-entry transfer system are made (limited to those that satisfy the requirements specified by Order of the Ministry of Finance for bonds held by a specified person; hereinafter referred to in this Article as "specified short-term government or company bonds") do not fall under the category of discount bonds prescribed in paragraphs (1) through (6):
- (i) national government bonds issued pursuant to the provisions of Article 46, paragraph (1) or Article 47 of the Act on Special Accounts;
  - (ii) national government bonds issued pursuant to the provisions of Article 136, paragraph (1) or Article 137, paragraph (1) of the Act on Special Accounts;
  - (iii) national government bonds issued pursuant to the provisions of Article 7, paragraph (1) of the Public Finance Act (Act No. 34 of 1947);
  - (iv) national government bonds issued pursuant to the provisions of Article 169, paragraph (1) or paragraph (2) of the Act on Special Accounts;
  - (v) national government bonds issued pursuant to the provisions of Article 82,

- paragraph (1) or paragraph (2) or Article 83, paragraph (1) of the Act on Special Accounts;
- (vi) national government bonds issued pursuant to the provisions of Article 9, paragraph (1) of the Fiscal Loan Fund Act (Act No. 100 of 1951);
  - (vii) national government bonds issued pursuant to the provisions of Article 62, paragraph (1) of the Act on Special Accounts;
  - (viii) national government bonds issued pursuant to the provisions of Article 94, paragraph (2) or Article 95, paragraph (1) of the Act on the Special Accounts;
  - (ix) short-term company bonds prescribed in Article 66, item (i) of the Act on the Book-Entry Transfer of Company Bonds, Shares, etc. or book-entry transfer foreign-denominated bonds prescribed in Article 36, paragraph (1) of the Supplementary Provisions of the Act, which satisfy the requirements specified by Order of the Ministry of Finance;
  - (x) short-term investment corporation bonds prescribed in Article 139-12, paragraph (1) of the Act on Investment Trusts and Investment Corporations;
  - (xi) short-term bonds prescribed in Article 54-4, paragraph (1) of the Shinkin Bank Act (Act No. 238 of 1951);
  - (xii) short-term company bonds prescribed in Article 61-10, paragraph (1) of the Insurance Business Act (Act No. 105 of 1995);
  - (xiii) specified short-term company bonds prescribed in Article 2, paragraph (8) of the Act on Securitization of Assets; and
  - (xiv) short-term Norinchukin Bank bonds prescribed in Article 62-2, paragraph (1) of the Norinchukin Bank Act (Act No. 93 of 2001).
- (10) The provisions of Article 37-15, paragraph (1) do not apply to any income specified by Cabinet Order as income from the transfer of specified short-term government or company bonds issued in Japan.
- (11) The provisions of Article 37-15, paragraph (2) do not apply to the transfer of specified short-term government or company bonds issued in Japan.
- (12) Where a person (excluding the corporations listed in Appended Table 1 of the Corporation Tax Act, specified book-entry transfer institution, etc., foreign intermediary and any other person specified by Cabinet Order) makes, for the first time since April 1, 1999, entries or records under the book-entry transfer system with regard to specified book-entry government bonds, etc. (meaning specified short-term government or company bonds, principal-only book-entry government bonds prescribed in Article 90, paragraph (2) of the Act on the Book-Entry Transfer of Company Bonds, Shares, etc., and coupon-only book-entry government bonds prescribed in paragraph (3) of the Article for which separate trading of principal and interest prescribed in paragraph (1) of the Article has been conducted pursuant to the provisions of Order of the Ministry of Finance; hereinafter the same applies in this Article) in the person's account that will be or has been established with a specified book-entry transfer

institution, etc. (meaning a [1] book-entry transfer institution prescribed in Article 2, paragraph (2) of the Act on the Book-Entry Transfer of Company Bonds, Shares, etc., [2] an institution that is deemed to be the book-entry transfer institution pursuant to the provisions of Article 48 of the Act, and [3] a specified account management institution (meaning a specified account management institution prescribed in Article 5-2, paragraph (5), item (ii)) and specified secondary account management institution (meaning a specified secondary account management institution prescribed in Article 5-2, paragraph (5), item (iii)), with each of which the book-entry transfer institution (including an institution that is deemed as such) has established an account in accordance with the operational rules prescribed in Article 3, paragraph (1), item (v) of the Act; hereinafter the same applies in this Article) or established with a foreign intermediary (meaning a secondary foreign account management institution prescribed in Article 5-2, paragraph (5), item (viii) (hereinafter referred to in this Article as a "secondary foreign account management institution") and a tertiary foreign account management institution prescribed in Article 5-2, paragraph (5), item (vii) (hereinafter referred to in this Article as a "tertiary foreign account management institution"); hereinafter the same applies in this Article), via a business office, etc. (meaning a business office, etc. prescribed in Article 5-2, paragraph (1); hereinafter the same applies in this Article) of the specified book-entry transfer institution, etc. or an overseas business office, etc. (meaning a business office or any other office of a foreign intermediary which is located outside Japan; hereinafter the same applies in this paragraph and the following paragraph) of the foreign intermediary, such person, upon making the first entries or records under the book-entry transfer system (limited to those made in the account; hereinafter the same applies in this Article), submit a written notice stating the person's name and address (or any other place specified by Order of the Ministry of Finance in the case where the person does not have an address in Japan; hereinafter the same applies in this Article) and any other matters specified by Order of the Ministry of Finance, to the head of the business office, etc. of the specified book-entry transfer institution, etc. through which the person makes the entries or records under the book-entry transfer system, or submit such a written notice via the foreign intermediary through which the person makes entries or records under the book-entry transfer system (in the case where the foreign intermediary is a tertiary foreign account management institution, submission must be made via the foreign intermediary (in the case where the foreign intermediary makes entries or records under the book-entry transfer system regarding the specified book-entry government bonds, etc. through another tertiary foreign account management institution, submission must be made via the foreign intermediary and such other tertiary foreign account management institution



pertaining to the entries or records under the book-entry transfer system regarding the specified book-entry government bonds, etc.) and the secondary foreign account management institution pertaining to the entries or records under the book-entry transfer system regarding the specified book-entry government bonds, etc.), to the head of the business office, etc. of the specified book-entry transfer institution, etc. through which the foreign intermediary (in the case where the foreign intermediary is a tertiary foreign account management institution: the secondary foreign account management institution pertaining to the entries or records under the book-entry transfer system regarding the specified book-entry government bonds, etc.) makes entries or records under the book-entry transfer system regarding the specified book-entry government bonds, etc. In this case, such person who submits the written notice must present a copy of the person's certificate of residence, certificate of registered matters of the corporation and any other document specified by Cabinet Order (hereinafter referred to in this paragraph to paragraph (18) as "identification documents") to the head of the business office, etc. of the specified book-entry transfer institution, etc. to which the written notice is submitted (excluding the case where the written notice is submitted via the foreign intermediary; hereinafter the same applies in this paragraph) or to the head of the overseas business office, etc. of the foreign intermediary to which the written notice is submitted, and the head of the business office, etc. of the specified book-entry-transfer institution, etc. to which the written notice is submitted or the head of the overseas business office, etc. of the foreign intermediary to which the written notice is submitted must confirm, by the identification documents, the name and address stated in the written notice.

(13) In the case referred to in the first part of the preceding paragraph, where the written notice set forth in the paragraph has been received by the head of the overseas business office, etc. of the foreign intermediary set forth in the paragraph, it is deemed that the written notice has been submitted to the head of the business office, etc. of the specified book-entry transfer institution, etc. through which the person makes entries or records under the book-entry transfer system regarding the specified book-entry government bonds, etc. set forth in the paragraph, when it has been received by the head of the overseas business office, etc. of the foreign intermediary.

(14) A foreign intermediary that has made a confirmation set forth in the second part of paragraph (12) must, for each person who makes entries or records under the book-entry transfer system set forth in the paragraph, submit a document certifying that the confirmation set forth in the paragraph has been made, the identification documents used for the confirmation and any other document specified by Cabinet Order, to the head of the business office, etc. of the specified book-entry transfer institution through which the foreign

intermediary makes the entries or records under the book-entry transfer system regarding the specified book-entry government bonds, etc. (in the case where the foreign intermediary is a tertiary foreign account management institution, submission must be made via the secondary foreign account management institution pertaining to the entries or records under the book-entry transfer system regarding the specified book-entry government bonds, etc. (in the case where the foreign intermediary makes entries or records under the book-entry transfer system regarding the specified book-entry government bonds, etc. through another tertiary foreign account management institution, submission must be made via the foreign intermediary and such other tertiary foreign account management institution pertaining to the entries or records under the book-entry transfer system regarding the specified book-entry government bonds, etc.) to the head of the business office, etc. of the specified book-entry transfer institution, etc. through which the secondary foreign account management institution makes entries or records under the book-entry transfer system regarding the specified book-entry government bonds, etc.)

- (15) A foreign intermediary keeps books with regard to the book-entry government bonds, etc. for which the person who makes entries or records under the book-entry transfer system prescribed in paragraph (12) has made entries or records under the book-entry transfer system through foreign intermediary, and must state or record in such books, pursuant to the provisions of Cabinet Order, the day on which entries or records under the book-entry transfer system have been made with regard to the book-entry government bonds, etc., and any other matters specified by Order of the Ministry of Finance, for each person who makes entries or records under the book-entry transfer system.
- (16) A foreign intermediary must, for each person who makes entries or records under the book-entry transfer system prescribed in the preceding paragraph, pursuant to the provisions of Cabinet Order, give notice of the day on which entries or records under the book-entry transfer system have been made with regard to the specified book-entry government bonds, etc. for which the person who makes entries or records under the book-entry transfer system has made entries or records under the book-entry transfer system through the foreign intermediary, and any other matters specified by Order of the Ministry of Finance, to the specified book-entry transfer institution, etc. through which the foreign intermediary has made entries or records under the book-entry transfer system regarding the specified book-entry government bonds, etc. (in the case where the foreign intermediary is a tertiary foreign account management institution, notice must be given to the specified book-entry transfer institution, etc. through which the secondary foreign account management institution pertaining to the entries or records under the book-entry transfer system

regarding the specified book-entry government bonds, etc. has made entries or records under the book-entry transfer system regarding the specified book-entry government bonds, etc.) by way of a document or any other means specified by Cabinet Order. In this case, the specified book-entry transfer institution, etc. must keep books with regard to the book-entry government bonds, etc., and must state or record, pursuant to the provisions of Cabinet Order, these matters in such books for each person who makes the entries or records under the book-entry transfer system.

(17) A person (excluding the corporations listed in Appended Table 1 of the Corporation Tax Act and any other persons specified by Cabinet Order) who has transferred specified book-entry government bonds, etc. on or after April 1, 1999 (excluding the transfer made by way of book-entry transfer from the account pertaining to entries or records under the book-entry transfer system; hereinafter the same applies in this paragraph), and therefore receives, in Japan, payment of a consideration for the transfer of the specified book-entry government bonds, etc. from the corporation that has accepted the transfer of the specified book-entry government bonds, etc. (including an association or foundation without juridical personality prescribed in Article 2, item (viii) of the Act; hereinafter the same applies in this Article) must notify the corporation that has accepted the transfer (hereinafter referred to in this paragraph as the "payer") of the person's name and address by the time the person is to receive payment. In this case, the person who receives payment must present the person's identification document to the payer, and the payer must confirm, by the identification document, the person's name and address stated in the notification.

(18) Where, in Japan on or after April 1, 1999, a person (excluding the corporations listed in Appended Table 1 of the Corporation Tax Act and any other person specified by Cabinet Order) receives, due to the redemption (including retirement by purchase; hereinafter the same applies in this paragraph) of specified book-entry government bonds, etc., payment of redemption money (or a consideration for the purchase for retirement by purchase; hereinafter the same applies in this Article), or receives, due to interest payment pertaining to specified book-entry government bonds, etc. (limited to interest on coupon-only book-entry government bonds prescribed in paragraph (12); hereinafter the same applies in this Article), payment of interest, such person, upon receiving the redemption or interest payment, submit a written notice stating the person's name and address and any other matters specified by Order of the Ministry of Finance to the person in charge of handling payment of redemption money or interest (in the case where the person in charge of handling payment is a foreign intermediary, submission must be made via the foreign intermediary (in the case where the foreign

intermediary is a tertiary foreign account management institution, and the foreign intermediary makes entries or records under the book-entry transfer system regarding the specified book-entry government bonds, etc. through a secondary foreign account management institution, submission is made via the foreign intermediary and the secondary foreign account management institution; in the case where the foreign intermediary is a tertiary foreign account management institution, and the foreign intermediary makes entries or records under the book-entry transfer system regarding the specified book-entry government bonds, etc. through another tertiary foreign account management institution, submission must be made via [1] the foreign intermediary, [2] such other tertiary foreign account management institution pertaining to the entries or records under the book-entry transfer system regarding the specified book-entry government bonds, etc., and [3] the secondary foreign account management institution pertaining to the entries or records under the book-entry transfer system regarding the specified book-entry government bonds, etc.) to the head of the business office, etc. of the specified book-entry transfer institution through which the foreign intermediary (in the case where the foreign intermediary is a tertiary foreign account management institution: the secondary foreign account management institution pertaining to the entries or records under the book-entry transfer system regarding the specified book-entry government bonds, etc.) makes entries or records under the book-entry transfer system regarding the specified book-entry government bonds, etc.) In this case, the person who submits the written notice must present the person's identification document to the person in charge of handling payment, and the person in charge of handling payment must confirm, by the identification document, the person's name and address stated in the written notice.

- (19) The provisions of paragraph (13) apply mutatis mutandis to the submission of a written notice set forth in the first part of the preceding paragraph, and the provisions of paragraph (14) apply mutatis mutandis to the person who makes the confirmation set forth in the second part of the preceding paragraph. In this case, the phrase "first part of the preceding paragraph" in paragraph (13) is deemed to be replaced with "first part of paragraph (18)," and the phrase "second part of paragraph (12)" in paragraph (14) is deemed to be replaced with "second part of paragraph (18)."
- (20) Special provisions for the submission of a written notice pursuant to the provisions of paragraph (12) in the case where entries or records under the book-entry transfer system regarding specified book-entry government bonds, etc. are made in the account pertaining to entries or records under the book-entry transfer system that has been confirmed pursuant to the provisions of Article 5-2, paragraph (9), special provisions for the submission of a written

notice pursuant to the provisions of paragraph (18) with regard to redemption money and interest on specified book-entry government bonds, etc. for which entries or records under the book-entry transfer system have been made in the account pertaining to entries or records under the book-entry transfer system that has been confirmed pursuant to the provisions of Article 5-2, paragraph (9), and other necessary matters concerning the application of the provisions of paragraph (12) to the preceding paragraph are specified by Cabinet Order.

(21) Where a person listed in each of the following items pays, in Japan on or after April 1, 1999, a consideration for the transfer of specified book-entry government bonds, etc. to an individual or a corporation (excluding the corporations listed in Appended Table 1 of the Corporation Tax Act, specified book-entry transfer institution, etc., foreign intermediary, and any other person specified by Cabinet Order; the same applies in the following paragraph) (such person hereinafter referred to in this paragraph as the "payer"; in the case where the person listed in each of the items is a foreign intermediary, the payer is to be the specified book-entry transfer institution, etc. through which the foreign intermediary (in the case where the foreign intermediary is a tertiary foreign account management institution: the secondary foreign account management institution pertaining to the entries or records under the book-entry transfer system regarding the specified book-entry government bonds, etc.) makes entries or records under the book-entry transfer system regarding the specified book-entry government bonds, etc.), the payer, for each person who receives payment of a consideration, submit a record stating the name and address of the person who receives the payment, the paid amount of the consideration of the transfer of the specified book-entry government bonds, etc., and any other matters specified by Order of the Ministry of Finance (referred to in paragraphs (23) through (25) as a "payment record for a consideration for the transfer of specified book-entry government bonds, etc."), to the competent district director with jurisdiction over the location of the payer's business office, etc. where the affairs for payment of a consideration are handled; hereinafter referred to in this paragraph as the "competent district director"), no later than January 31 of the year following the year that includes the day on which payment has been determined (in the case where the payer is the specified book-entry transfer institution, etc. that is related to the foreign intermediary with regard to the specified book-entry government bonds, etc.: the day on which the specified book-entry transfer institution, etc. has received a notice pursuant to the provisions of paragraph (16) from the foreign intermediary; hereinafter the same applies in this paragraph) (in the case where approval has been obtained from the competent district director pursuant to the provisions of Cabinet Order, submission is made no later than the last day of the month following the month that includes

the day on which payment has been determined):

- (i) a corporation that has accepted the transfer of the specified book-entry government bonds, etc. (excluding such corporation that has accepted the transfer via the person listed in the following item); and
- (ii) a specified book-entry transfer institution, etc. or foreign intermediary that has been entrusted with sales with regard to the transfer of the specified book-entry government bonds, etc.

(22) Where a person handles, in Japan on or after April 1, 1999, payment of redemption money or interest on specified book-entry government bonds, etc. to an individual or corporation (hereinafter referred to in this paragraph as the "person in charge of handling payment"; in the case where the person who handles the payment is a foreign intermediary, the person in charge of handling payment is to be the specified book-entry transfer institution, etc. prescribed in the preceding paragraph that is related to the foreign intermediary with regard to the specified book-entry government bonds, etc.), the person in charge of handling payment, for each person who receives payment of redemption money or interest, submit a record stating the name and address of the person who received payment, the paid amount of redemption money or interest of the specified book-entry government bonds, etc., and any other matters specified by Order of the Ministry of Finance (referred to in the following paragraph to paragraph (25) as a "payment record for redemption money, etc. of specified book-entry government bonds, etc."), to the competent district director with jurisdiction over the location of the business office, etc. of the person in charge of handling payment where the affairs for payment of redemption money, etc. are handled; hereinafter referred to in this paragraph as the "competent district director"), no later than January 31 of the year following the year that includes the day on which payment was made (in the case where approval has been obtained from the competent district director pursuant to the provisions of Cabinet Order, submission is made no later than the last day of the month following the month that includes the day on which payment was made).

(23) Where the person who pays a consideration for the transfer of specified book-entry government bonds, etc. prescribed in paragraph (21) or the person who handles payment of redemption money or interest on specified book-entry government bonds, etc. prescribed in the preceding paragraph has obtained approval from the district director of the tax office pursuant to the provisions of Cabinet Order, the person may submit an optical disk, magnetic disk or any other recording medium specified by Order of the Ministry of Finance (hereinafter referred to in this paragraph as an "optical disk, etc.") in which the matters to be stated in a record pursuant to the provisions of the paragraphs are recorded, instead of submitting the report pursuant to the

provisions of the paragraphs. In this case, with regard to the application of the provisions of the preceding two paragraphs, the following paragraph, paragraph (25), and Article 42-3, the optical disk, etc. is deemed to be a payment record for a consideration for the transfer of specified book-entry government bonds, etc. or a payment record for redemption money, etc. of specified book-entry government bonds, etc.

(24) Beyond what is specified in the preceding paragraph, special provisions for the submission of a report of payment of a consideration for the transfer of specified book-entry government bonds, etc. or a report of payment of redemption money, etc. of specified book-entry government bonds, etc., and other necessary matters concerning the application of the provisions of paragraph (21) and paragraph (22) are specified by Cabinet Order.

(25) The relevant official of the National Tax Agency, the Regional Taxation Bureau, or the Tax Office may, when it is necessary in the examination concerning the submission of a report of payment of a consideration for the transfer of specified book-entry government bonds, etc. or a report of payment of redemption money, etc. of specified book-entry government bonds, etc., ask questions of the person who is obliged to submit the report of payment of a consideration for the transfer of specified book-entry government bonds, etc. or a report of payment of redemption money, etc. of specified book-entry government bonds, etc., or inspect the person's books, documents and any other materials concerning the handling of payment of a consideration for the transfer of specified book-entry government bonds, etc. or payment of redemption money or interest on specified book-entry government bonds, etc.

(26) The relevant official of the National Tax Agency, the Regional Taxation Bureau, or the Tax Office, when asking questions or conducting an inspection pursuant to the provisions of the preceding paragraph, must carry an identification card and present it to the person concerned when requested

(27) The authority to ask questions or conduct an inspection pursuant to the provisions of paragraph (25) is not construed to be granted for criminal investigation.

(Tax Exemption on Bond Issue Discounts for Foreign Private Bonds)

Article 41-13 Income tax is not imposed with respect to any discount on foreign private bonds (meaning a margin generated where the amount to be received due to redemption of foreign private bonds exceeds the issue price of the foreign private bonds) to be received by a nonresident with regard to foreign private bonds prescribed in Article 6, paragraph (1) issued during the period from April 1, 1998, to March 31, 2010 (excluding those issued by a foreign corporation which is specified by Cabinet Order as prescribed in paragraph (4) of the Article as a foreign corporation whose tax burden to be imposed on its

income earned in a state or territory where its head office or principal office is located is significantly lower than the tax burden to be imposed on the income of a corporation in Japan); provided, however, that this does not apply to such discount on foreign private bonds to be received by a nonresident who has permanent establishments in Japan, which is attributed to a business conducted by the nonresident in Japan or which is otherwise specified by Cabinet Order.

(Special Provisions on Withholding at the Source for Remuneration Paid by a Tax-Exempt Entertainment Corporation to Entertainers for Their Provision of Services)

Article 42 (1) Where a nonresident or foreign corporation (excluding a nonresident having a residence in Japan or a foreign corporation having an office, place of business or any other business facility equivalent thereto in Japan) engaged in conducting, in Japan, the business prescribed in Article 161, item (ii) of the Income Tax Act (limited to a business that is mainly intended to provide the services of motion picture or theatre artistes, musicians and any other entertainers, or professional athletes (hereinafter referred to in this paragraph and paragraph (3) as the "provision of the services of entertainers, etc.)), which is exempt from income tax pursuant to the provisions of a convention prescribed in Article 162 of the Act (hereinafter referred to in this paragraph as a "tax convention") with respect to the consideration listed in Article 161, item (ii) of the Act for the provision of the services of entertainers, etc. (such nonresident or foreign corporation is limited to those to be exempt from income tax on condition that the nonresident or foreign corporation has no permanent establishments (meaning permanent establishments specified by the tax convention; hereinafter the same applies in this paragraph) in Japan or that the consideration to be received by the nonresident or foreign corporation is not attributed to their or its permanent establishments located in Japan; hereinafter referred to in this paragraph and paragraph (3) as a "tax-exempt entertainment corporation, etc."), pays outside Japan to the person listed in any of the following items, pay, remuneration or consideration specified in the relevant item (hereinafter referred to in this Article as "remuneration for the provision of the services of entertainers, etc."), from the consideration for which the tax-exempt entertainment corporation, etc. is exempt from income tax, the tax-exempt entertainment corporation, etc. must, upon payment, collect income tax equivalent to the amount calculated by multiplying the amount of remuneration for the provision of the services of entertainers, etc. by a tax rate of 20 percent, and pay it to the State no later than the last day of the month following the month that includes the date of collection:

(i) another nonresident who carries out the provision of the services of



- entertainers, etc. for the business: Pay or remuneration listed in Article 161, item (viii) of the Income Tax Act which pertains to their provision of the services of entertainers, etc.; and
- (ii) another nonresident or foreign corporation engaged in conducting a business that is mainly intended to provide the services of entertainers, etc. for the business: Consideration listed in Article 161, item (ii) of the Income Tax Act which pertains to their or its provision of the services of entertainers, etc.
- (2) Income tax to be collected and paid pursuant to the provisions of the preceding paragraph is deemed to be withholding at the source as prescribed in Article 2, paragraph (1), item (xlv) of the Income Tax Act, and the provisions of the Act, the Act on General Rules for National Taxes, and the National Tax Collection Act are applied thereto. In this case, the provisions of the Income Tax Act and the Corporation Tax Act are applied pursuant to the following provisions:
- (i) where the person listed in item (ii) of the preceding paragraph has been subject to the collection of income tax pursuant to the provisions of the paragraph with respect to the consideration specified in the item, with regard to the application of the provisions of Article 215 of the Income Tax Act, the phrase "Article 212, paragraph (1) (Withholding Liability)" in the Article is deemed to be replaced with "Article 212, paragraph (1) (Withholding Liability) or the provisions of Article 42, paragraph (1) of the Act on Special Measures Concerning Taxation (Special Provisions on Withholding at the Source for Remuneration, etc. Paid by a Tax-Exempt Entertainment Corporation to Entertainers for Their Provision of Services)," and the term "the paragraph" in the Article is deemed to be replaced with "these clauses.";
- (ii) where the person who receives payment of remuneration for the provision of services as an entertainer, etc. is a nonresident, with regard to the application of the provisions of Article 172 and Article 214 of the Income Tax Act to the nonresident: in Article 172, paragraph (1) of the Act, the phrase "Part IV, Chapter V (Withholding at the Source on the Income of Nonresidents or Corporations)" is deemed to be replaced with "Part IV, Chapter V (Withholding at the Source on the Income of Nonresidents or Corporations) or the provisions of Article 42, paragraph (1) of the Act on Special Measures Concerning Taxation (Special Provisions on Withholding at the Source for Remuneration, etc. Paid by a Tax-Exempt Entertainment Corporation, etc. to Entertainers for Their Provision of Services)," and the phrase "Part IV, Chapter V" is deemed to be replaced with "Part IV, Chapter V or the provisions of Article 42, paragraph (1) of the Act on Special Measures Concerning Taxation"; in Article 214, paragraph (1), the phrase

- "Article 212, paragraph (1) (Withholding Liability)" is deemed to be replaced with "Article 212, paragraph (1) (Withholding Liability) and the provisions of Article 42, paragraph (1) of the Act on Special Measures Concerning Taxation (Special Provisions on Withholding at the Source for Remuneration, etc. Paid by a Tax-Exempt Entertainment Corporation, etc. to Entertainers for Their Provision of Services)."; and
- (iii) where the person who receives payment of remuneration for the provision of the services of entertainers, etc. is a foreign corporation, with regard to the application of the provisions of Article 180 of the Income Tax Act and Article 144 of the Corporation Tax Act to the foreign corporation: in Article 180, paragraph (1) of the Income Tax Act, the phrase "the preceding two Articles" is deemed to be replaced with "the preceding two Articles and the provisions of Article 42, paragraph (1) of the Act on Special Measures Concerning Taxation (Special Provisions on Withholding at the Source for Remuneration, etc. Paid by a Tax-Exempt Entertainment Corporation, etc. to Entertainers for Their Provision of Services)"; in Article 144 of the Corporation Tax Act, the phrase "Article 212, paragraph (1) of the Income Tax Act (Withholding Liability Regarding Income of Nonresidents or Foreign Corporations)" is deemed to be replaced with "Article 212, paragraph (1) of the Income Tax Act (Withholding Liability Regarding Income of Nonresidents or Foreign Corporations) or the provisions of Article 42, paragraph (1) of the Act on Special Measures Concerning Taxation (Special Provisions on Withholding at the Source for Remuneration, etc. Paid by a Tax-Exempt Entertainment Corporation, etc. to Entertainers for Their Provision of Services)," the phrase "Article 215 of the Act" is deemed to be replaced with "Article 215 of the Income Tax Act," the phrase "the paragraph [Article 212, paragraph (1) of the Act]" is deemed to be replaced with "Article 212, paragraph (1) of the Act or the provisions of Article 42, paragraph (1) of the Act on Special Measures Concerning Taxation," and the phrase "Article 161, item (viii) of the Act" is deemed to be replaced with "Article 161, item (viii) of the Income Tax Act."
- (3) With regard to the application of the provisions of Article 179 and Article 213, paragraph (1) of the Income Tax Act in the case where a tax-exempt entertainment corporation, etc. receives payment of the consideration listed in Article 161, item (ii) of the Act for the provision of the services of entertainers, etc., the phrase "20 percent" in Article 179, item (i) and Article 213, paragraph (1), item (i) of the Act is deemed to be replaced with "15 percent."
- (4) The treatment of income tax collected, pursuant to the provisions of paragraph (1), by the person listed in paragraph (1), item (ii) who is a nonresident, and other necessary matters concerning the application of the provisions of the paragraph and the preceding paragraph are specified by

Cabinet Order.

(Special Provisions on Taxation of Interest Received by a Foreign Financial Institution from Bond Transactions with Repurchase/Resale Agreements)

Article 42-2 (1) Where a foreign financial institution, etc. receives payment of interest listed in Article 161, item (vi) of the Income Tax Act from a specified financial institution, etc., with respect to a bond transaction with a repurchase or resale agreement specified by Cabinet Order regarding any of the following bonds, which has been commenced on or after April 1, 2002, and from which the domestic source income listed in Article 161, item (vi) of the Act arises (limited to such transaction that satisfies the requirements specified by Cabinet Order; referred to in paragraph (10) as a "bond transaction with a repurchase/resale agreement"), income tax is not imposed on the interest to be received (excluding the interest specified by Cabinet Order; hereinafter referred to in this Article as "specified interest"):

- (i) book-entry government bonds prescribed in Article 88 of the Act on the Book-Entry Transfer of Company Bonds, Shares;
- (ii) bonds issued or guaranteed by a foreign state or local public entity thereof; and
- (iii) bonds issued or guaranteed by a foreign corporation, which are specified by Cabinet Order (excluding those listed in the preceding item).

(2) The provisions of the preceding paragraph do not apply where the foreign financial institution, etc. that receives payment of specified interest (limited to a foreign corporation listed in paragraph (4), item (i), (a)) falls under the category of foreign corporation listed in any of the following items:

- (i) a foreign corporation (excluding a corporation of the Contracting State other than Japan of a convention prescribed in Article 162 of the Income Tax Act) that falls under the category of a foreign controlling shareholder, etc. prescribed in Article 66-5, paragraph (4), item (i), of the specified financial institution, etc. that pays the specified interest;
- (ii) a foreign corporation that falls under the category of specified foreign subsidiary, etc. prescribed in Article 40-4, paragraph (1) or Article 66-6, paragraph (1), which is the specified foreign subsidiary, etc. of a resident or domestic corporation (excluding a foreign corporation listed in the preceding item); or
- (iii) a foreign corporation (excluding the foreign corporations listed in the preceding two items) in the case where foreign corporation tax (meaning foreign corporation tax prescribed in Article 69, paragraph (1) of the Corporation Tax Act; hereinafter the same applies in this item) is not imposed on the foreign corporation with respect to the specified interest in the state or territory where its head office or principal office is located

- (hereinafter referred to in this item as the "state of the head office")  
(excluding the case where the specified interest is attributed to a business conducted by the foreign corporation at its business office or other office (referred to in paragraph (4) and paragraph (7) as a "business office, etc.") located in any state or territory other than the state of the head office, and foreign corporation tax is imposed on the foreign corporation with respect to the specified interest in such state or territory).
- (3) The provisions of paragraph (1) do not apply to specified interest which is received by a foreign corporation with a permanent establishment in Japan and is attributed to a business conducted by the foreign corporation in Japan.
- (4) In this Article, the meanings of the terms listed in the following items are as prescribed respectively in those items:
- (i) foreign financial institution, etc.: Any of the following foreign corporations:
- (a) a foreign corporation engaged in the banking business, financial instruments business or insurance business in a foreign state in accordance with the laws and regulations of the state;
  - (b) a central bank of a foreign state;
  - (c) an international organization established based on an international agreement;
- (ii) specified financial institution, etc.: Any of the following corporations:
- (a) a corporation (limited to a corporation that has a business office, etc. in Japan) which is a financial institution prescribed in Article 8, paragraph (1) or which is a financial instruments business operator prescribed in paragraph (2) of the Article that falls under the category of financial institution prescribed in Article 2, paragraph (2) of the Act on Collective Clearing of Specified Financial Transactions Conducted by Financial Institutions (Act No. 108 of 1998); and
  - (b) the Bank of Japan.
- (5) A foreign financial institution, etc. that seeks the application of the provisions of paragraph (1), pursuant to the provisions of Cabinet Order, must submit a written application stating that it seeks the application of the provisions of the paragraph with respect to the specified interest receivable, as well as its name and the location of its head office or principal office (or any other place specified by Order of the Ministry of Finance for a foreign corporation with a permanent establishment in Japan; hereinafter the same applies in this Article) and any other matters specified by Order of the Ministry of Finance (hereinafter referred to in this Article as a "written application for a tax exemption"), no later than the day preceding the day on which the foreign financial institution, etc. is to receive payment for the first time, via the person who pays the specified interest, to the competent district director with jurisdiction over the place for tax payment pursuant to the provisions of Article

17 of the Income Tax Act which pertains to the person who makes payment in terms of the specified interest (in the case where another place has been designated pursuant to the provisions of Article 18, paragraph (2) of the Act: the designated place for tax payment).

- (6) In the case referred to in the preceding paragraph, where a written application for a tax exemption has been submitted to the district director of the tax office prescribed in the paragraph, it is deemed that the submission to the district director of the tax office has been made when the written application has been received by the person who pays the specified interest set forth in the paragraph.
- (7) A foreign financial institution, etc. that submits a written application for tax an exemption, upon submission, must present its certificate of registered matters of the corporation and any other document specified by Cabinet Order to the head of the business office, etc. of the specified financial institution, etc. via which submission is made, and the head of the business office, etc. of the specified financial institution, etc. must confirm, by the documents, the name and the location of the head office or principal office stated in the written application.
- (8) Where a foreign financial institution, etc. that has submitted a written application for a tax exemption has, after submission, changed its name or the location of its head office or principal office, the foreign financial institution, etc., no later than the day preceding the day on which the foreign financial institution, etc. is to receive, for the first time since the date of change, payment of specified interest from the specified financial institution, etc. via which the written application for a tax exemption has been submitted, submit a written application stating the new name and location of the head office or principal office of the foreign financial institution, etc. and any other matters specified by Order of the Ministry of Finance, to the district director of the tax office prescribed in paragraph (5) via the specified financial institution, etc. In this case, where the foreign financial institution, etc. has failed to submit the written application, the provisions of paragraph (1) do not apply to the specified interest to be received by the foreign financial institution, etc. from the specified financial institution, etc. on or after the day on which the change has been made.
- (9) The provisions of paragraph (7) apply mutatis mutandis where the foreign financial institution, etc. that submits a written application prescribed in the preceding paragraph submits the written application pursuant to the provisions of the paragraph. In this case, in paragraph (7), the phrase "foreign financial institution, etc. that submits a written application for a tax exemption" is deemed to be replaced with "foreign financial institution, etc. that submits a written application prescribed in the following paragraph," the

phrase "the written application for a tax exemption" is deemed to be replaced with "the written application," and the term "the name and the location" is deemed to be replaced with "new name and new location."

- (10) A specified financial institution, etc. must keep books with regard to bond transactions with repurchase/resale agreements conducted with a foreign financial institution, etc. that has submitted a written application for a tax exemption, and must state or record in such books, pursuant to the provisions of Cabinet Order, the day on which a contract for such bond transaction with a repurchase/resale agreement was concluded and any other matters specified by Order of the Ministry of Finance, for each foreign financial institution, etc. that has submitted a written application for a tax exemption.
- (11) The due date of filing a written application for a tax exemption, and other necessary matters concerning the application of the provisions of paragraphs (1) through (3) and paragraph (5) through the preceding paragraph are specified by Cabinet Order.

(Penal Provisions Pertaining to Submission of a Report of Payment of

Consideration for Transfer of Specified Book-Entry Government Bonds)

Article 42-3 (1) A person who falls under any of the following items is punished by imprisonment with work for not more than one year or a fine of not more than 200,000 yen:

- (i) a person who has failed to submit the written notice set forth in Article 41-12, paragraph (12) to the head of the business office, etc. of the specified book-entry transfer institution, etc. prescribed in the paragraph, upon making entries or records under the book-entry transfer system set forth in the paragraph; a person who has made false entries or records in the written notice and has submitted the written notice to the head of the business office, etc. of the specified book-entry transfer institution, etc.; a person who has failed to submit the written notice set forth in paragraph (18) of the Article to the person in charge of handling payment of redemption money or interest prescribed in the paragraph or the head of the business office, etc. of the specified book-entry transfer institution, etc. prescribed in the paragraph, upon receiving the redemption or interest payment; or a person who has made false entries or records in the written notice and has submitted the written notice to the person in charge of handling payment of redemption money or interest;
- (ii) a person who has failed to submit the report on the granting of specified share options, etc. prescribed in Article 29-2, paragraph (5), the report on changes of specified shares, etc. prescribed in paragraph (6) of the Article, the written report prescribed in Article 37-11-3, paragraph (7), the report of payment of consideration for the transfer of specified book-entry government

- bonds, etc. prescribed in Article 41-12, paragraph (21), or the report of payment of redemption money, etc. for specified book-entry government bonds, etc. prescribed in paragraph (22) of the Article, to the district director of the tax office no later than the due date for submitting such report or written report; or a person who has made false entries or records in such report or written report and has submit the report or written report to the district director of the tax office;
- (iii) a person who has failed to deliver the written notice prescribed in Article 8-4, paragraph (4) or paragraph (5) or the written report prescribed in Article 37-11-3, paragraph (7) to the resident, nonresident with a permanent establishment in Japan, or person receiving the payment prescribed in these provisions, no later than the due date for delivering such written notice or written report; a person who has made false entries or records in such written notice or written report and has delivered the written notice or written report to the resident, nonresident with a permanent establishment in Japan, or person receiving the payment; or a person who has provided false matters by the electromagnetic means pursuant to the provisions of Article 8-4, paragraph (6) or Article 37-11-3, paragraph (8);
- (iv) a person who has refused a request under the proviso of Article 8-4, paragraph (6) or the proviso of Article 37-11-3, paragraph (8) without justifiable grounds, or who has made false entries or records in the written notice prescribed in the proviso of Article 8-4, paragraph (6) or the written report prescribed in the proviso of Article 37-11-3, paragraph (8) and has delivered the written notice or written report to the resident, nonresident with a permanent establishment in Japan, or person receiving the payment prescribed in those provisions;
- (v) a person who has failed to answer or who has given a false answer to the questions asked by the relevant officials pursuant to the provisions of Article 29-2, paragraph (9), Article 37-11-3, paragraph (12), or Article 41-12, paragraph (25), or who has refused, obstructed, or avoided the inspection under those provisions; or
- (vi) a person who has presented books and documents which contain false entries or records concerning the inspection under Article 29-2, paragraph (9), Article 37-11-3, paragraph (12), or Article 41-12, paragraph (25).
- (2) The crime set forth in item (i) of the preceding paragraph is governed by Article 2 of the Penal Code (Act No. 45 of 1907).
- (3) When a person, who is engaged in or who was formerly engaged in affairs related to an examination concerning the submission of the report on the granting of specified share options, etc. prescribed in Article 29-2, paragraph (5), the report on changes in specified shares, etc. prescribed in paragraph (6) of the Article, the written report prescribed in Article 37-11-3, paragraph (7),

the report of payment of consideration for the transfer of specified book-entry government bonds, etc. prescribed in Article 41-12, paragraph (21), or the report of payment of redemption money, etc. of specified book-entry government bonds, etc. prescribed in paragraph (22) of the Article, has revealed or misappropriated any secret that has become known to their in the course of performing their duties, the person is punished by imprisonment with work for not more than two years or a fine of not more than 300,000 yen.

- (4) When the representative of a corporation (including an association or foundation without juridical personality, etc. (meaning an association or foundation without juridical personality, etc. as prescribed in Article 2, item (viii) of the Corporation Tax Act; hereinafter the same applies in this Article); hereinafter the same applies in this paragraph) (such representative includes the administrator of an association or foundation without juridical personality, etc.), or an agent, employee, or other worker of a corporation or individual has committed a violation set forth in paragraph (1) with regard to the business or property of the corporation or individual, not only the offender is punished but also the corporation or individual is punished by the fine prescribed in the paragraph.
- (5) Where the provisions of the preceding paragraph applies to an association or foundation without juridical personality, etc., its representative or administrator represent the association or foundation without juridical personality, etc. with regard to its procedural act, and the legal provisions concerning criminal procedures that are applicable in the case where a corporation stands as the accused or the suspect apply *mutatis mutandis*.

### **Chapter III Special Provisions on the Corporation Tax Act**

#### **Section 5-2 Special Tax Rate for the Transfer of Land**

(Special Tax Rate for the Transfer of Land)

Article 62-3 (1) Where a corporation has made transfer, etc. of land, the amount of corporation tax to be imposed on the corporation on its income for each business year or on its liquidation income is to be, notwithstanding the provisions of Article 66 paragraphs (1) to (3) (including the case where these provisions are applied pursuant to Article 102, paragraph (1), item (ii) of the Corporation Tax Act), Article 99, and Article 143, paragraph (1) and paragraph (2) of the Act, the provisions of Article 42-4, paragraph (11), Article 42-5, paragraph (5), Article 42-6, paragraph (5), Article 42-7, paragraph (7), Article 42-9, paragraph (4), Article 42-10, paragraph (5), Article 42-11, paragraph (5), Article 62, paragraph (1) and paragraph (8), paragraph (1) of the following Article, Article 67-2, paragraph (1) and Article 68, paragraph (1), and the provisions of other corporation tax-related laws and regulations, the sum of the



amount of corporation tax calculated pursuant to these provisions plus the amount obtained by multiplying the total capital gain from the transfer, etc. of land (excluding transfer, etc. to which the provisions of paragraph (1) of the following Article applies) by the rate of five percent.

(2) In this Article, the terms listed in the following items have the meanings as specified in the respective items:

(i) transfer, etc. of land: These mean the following acts:

(a) transfer of land (limited to land in Japan; hereinafter the same applies in this item) or any right on land (hereinafter referred to in this Section as "land, etc.") (excluding transfer of land, etc. as a result of qualified capital contribution in kind or qualified post-formation acquisition of assets and including the following acts):

1. transfer of land, etc. as a result of a merger (excluding a qualified merger) or a company split (excluding a qualified company split);
2. an act to have another person (including another consolidated corporation that has a consolidated full controlling interest with a consolidated corporation) use land for a long period of time by establishing superficies or rights of lease or under a contract and which is specified by Cabinet Order; and
3. an act to receive a reward for acting as an agent or intermediary in buying or selling or exchanging land, etc. and other acts specified by Cabinet Order as being equivalent to transfer of land, etc.;

(b) transfer of shares or capital contributions issued by a corporation whose assets mainly consist of land, etc. (excluding the part of the shares or capital contributions falling under the category of the capital contributions, units of investment, or beneficial rights listed as follows) (such transfer is to exclude transfer as a result of qualified capital contribution in kind or qualified post-formation acquisition of assets and includes transfer as a result of a merger (excluding a qualified merger) or a company split (excluding a qualified company split)) and which is specified by Cabinet Order as being equivalent to transfer of land, etc. ;

1. preferred equity investment as prescribed in Article 2, paragraph (5) of the Act on Securitization of Assets and specified contribution as prescribed in paragraph (6) of the Article made by a special purpose company as prescribed in Article 2, paragraph (3) of the Act that falls under what is listed in Article 67-14, paragraph (1), item (i), (b), 1. or 2., or (b), 3. or 4. of the item (excluding that which falls under the category of family corporations prescribed in item (ii), (d) of the paragraph);
2. the units of investment prescribed in Article 2, paragraph (14) of the Act on Investment Trusts and Investment Corporations of an investment

- corporation as prescribed in Article 2, paragraph (12) of the Act that falls under what is listed in Article 67-15, paragraph (1), item (i), (b), 1. or 2. (excluding one which falls under the category of a family corporation as prescribed in item (ii), (d) of the paragraph);
3. beneficiary rights of a trust subject to corporation taxation which is a special purpose trust listed in Article 2, item (xxix)-2, (e) of the Corporation Tax Act and which meets the requirements listed in Article 68-3-2, paragraph (1), item (i), (b) (excluding one which falls under the category of a family corporation as prescribed in item (ii), (a) of the paragraph);
  4. beneficiary rights of a trust subject to corporation taxation which is an investment trust as listed in Article 2, item (xxix)-2, (d) of the Corporation Tax Act and which meets the requirements listed in Article 68-3-3, paragraph (1), item (i), (b) (excluding one which falls under the category of a family corporation as prescribed in item (ii), (a) of the paragraph);
- (c) where residual property of a corporation in liquidation contains land, etc., the determination of the residual property;
- (ii) the amount of capital gain: These mean the amount that remains after deducting, from the amount calculated as specified by Cabinet Order as the amount of proceeds from the transfer, etc. of the land, the amount calculated as specified by Cabinet Order as the amount of cost price for the proceeds and the amount of expenses directly or indirectly required for the transfer, etc. of the land.
- (3) The provisions of paragraph (1) do not apply to a transfer of inventory assets (excluding those specified by Cabinet Order as having been used for the corporation's business during the period from the date of the acquisition thereof to the date of the transfer thereof) which falls under the category specified by a Cabinet Order, from among transfers of land, etc. (excluding a transfer of land, etc. as a result of qualified capital contribution in kind or qualified post-formation acquisition of assets and including acts listed in item (i), (a), 1. and 2. of the preceding paragraph; hereinafter the same applies in this Section).
- (4) The provisions of paragraph (1) do not apply to the case where a corporation has made transfer of its land, etc. (excluding land, etc. falling under the category of inventory assets; hereinafter the same applies through to paragraph (8) and in paragraph (10)) during the period between January 1, 1992 and December 31, 2008 and when it has been certified, as specified by Order of the Ministry of Finance, that the transfer of the land, etc. falls under the category of the following transfers of land, etc.:
- (i) transfer of land, etc. to the State, a local public entity, or any other

- corporation equivalent thereto which is specified by Cabinet Order;
- (ii) transfer of land, etc. to an Urban Renaissance Agency, a Land Development Public Corporation, or any other corporation equivalent thereto which is specified by Cabinet Order as a corporation aiming to conduct business for the provision of residential land or housing or advance acquisition of land, for which the transferred land, etc. is deemed to be directly necessary for conducting the business (excluding a transfer of land, etc. to a Land Development Public Corporation which is specified by Cabinet Order);
  - (iii) transfer of land, etc. as a result of nontaxable exchanges of properties, etc. prescribed in Article 65-2, paragraph (1) (excluding that which falls under the category of a transfer listed in the preceding two items or any other transfer of land, etc. specified by Cabinet Order);
  - (iv) transfer of land, etc. to a person who carries out a type 1 urban redevelopment project under the Urban Renewal Act, with the transferred land, etc. being used for the project (excluding that which falls under the category of a transfer listed in the preceding three items or any other transfer of land, etc. specified by Cabinet Order);
  - (v) transfer of land, etc. to a person who carries out a disaster control district improvement project under the Act on Promotion of Improvement of Disaster Control Districts in Populated Urban Districts, with the transferred land, etc. being used for the project (excluding that which falls under the category of a transfer listed in items (i) through (iii) or any other transfer of land, etc. specified by Cabinet Order);
  - (vi) transfer of land, etc. to a certified business operator as prescribed in Article 7, paragraph (1) of the Act on Promotion of Improvement of Disaster Control Districts in Populated Urban Districts for a project to reconstruct buildings under a certified reconstruction plan as prescribed in Article 8 of the Act that is carried out within a disaster control district as prescribed in Article 3, paragraph (1), item (i) of the Act (limited to a certified reconstruction plan that meets the requirement that the total site area of the buildings to be newly constructed is 500 square meters or more, as well as any other requirements specified by Cabinet Order), with the transferred land, etc. being used for the project (excluding that which falls under the category of a transfer listed in item (ii) through the preceding item or any other transfer of land, etc. specified by Cabinet Order);
  - (vii) transfer of land, etc. to a certified business operator as prescribed in Article 23 of the Act on Special Measures Concerning Urban Reconstruction for an urban reconstruction project as prescribed in Article 25 of the Act under a certified plan as prescribed in the Article (limited to an urban reconstruction project that meets the requirements that the buildings specified in the certified plan (limited to buildings whose building area is

- larger than specified by Order of the Ministry of Finance) are constructed and that the area of the district where the project is to be carried out is one hectare or larger, as well as any other requirements specified by Cabinet Order) (such certified business operator includes the Urban Renaissance Agency that has concluded the agreement concerning the acquisition of land, etc. within the district with the certified business operator, as specified in the certified plan), with the transferred land, etc. being used for the urban reconstruction project (excluding that which falls under the category of a transfer listed in item (ii) through the preceding item);
- (viii) transfer of land, etc. to a certified improvement business operator as prescribed in Article 65 of the Act on Special Measures Concerning Urban Reconstruction for an urban reconstruction improvement project as prescribed in Article 67 of the Act under a certified improvement plan as prescribed in the Article (limited to an urban reconstruction improvement project that meets the requirements that the buildings specified in the certified improvement plan (limited to buildings whose building area is larger than specified by Order of the Ministry of Finance) are constructed and that the area of the district where the project is to be carried out is 0.5 hectare or larger, as well as any other requirements specified by Cabinet Order) (such certified improvement business operator includes the Urban Renaissance Agency that has concluded the agreement concerning the acquisition of land, etc. within the district with the certified improvement business operator, as specified in the certified improvement plan), with the transferred land, etc. being used for the urban reconstruction improvement project (excluding that which falls under the category of a transfer listed in item (ii) through the preceding item);
- (ix) transfer of land, etc. to a person who carries out a condominium reconstruction project based on a claim set forth in Article 15, paragraph (1) or Article 64, paragraph (1) or paragraph (3) of the Act on Facilitation of Reconstruction of Condominiums or based on a proposal set forth in Article 56, paragraph (1) of the Act (such project means a condominium reconstruction project as prescribed in Article 2, paragraph (1), item (iv) of the Act and such person means a person who carries out a project as prescribed in Article 2, paragraph (1), item (v) of the Act; hereinafter the same applies in this item), or transfer of land, etc. (limited to land, etc. related to an adjacent construction site as prescribed in Article 11, paragraph (1) of the Act) to a person who carries out a condominium reconstruction project under which a condominium to be reconstructed as prescribed in Article 2, paragraph (1), item (vi) of the Act falls under the category of a building specified by Cabinet Order, and the total area of a reconstructed condominium as prescribed in item (vii) of the paragraph is not

- less than the total area of the former, with the transferred land, etc. being used for the condominium reconstruction project (excluding that which falls under the category of a transfer listed in the preceding three items);
- (x) transfer of land, etc., which is located in a district as specified by Cabinet Order within a city planning district as prescribed in Article 4, paragraph (2) of the City Planning Act, to a person who carries out a project to construct a building whose building area is larger than specified by Cabinet Order (limited to a project that meets the requirement that the area of the district where the project is to be carried out is 500 square meters or larger, as well as any other requirements specified by Cabinet Order), with the transferred land, etc. being used for the project (excluding that which falls under the category of a transfer listed in item (vi) to the preceding item, item (xii), or items (xiv) through (xvii));
- (xi) transfer of land, etc., which is located in a district or a zone listed in (a) or (b) of the left-hand column of item (xii) of the table of Article 65-7, paragraph (1), to a person who carries out a project specified by Cabinet Order to construct a mid-to-high-rise fire-proof building of four-stories in height or higher, with the transferred land, etc. being used for the project (excluding that which falls under the category of a transfer listed in item (vi) through the preceding item, the following item, or items (xiv) through (xvii));
- (xii) transfer of land, etc. to an individual or a corporation that is to carry out the development of a unit of residential land (limited to a transfer which meets the following requirements) (in the case where this status has been succeeded to based on the development permit as prescribed in Article 44 or Article 45 of the City Planning Act (hereinafter referred to in this item as "status succeeded to based on the development permit"), such individual is to be the individual who was the transferor of the status succeeded to based on the development permit who was to carry out the development, or the individual who has succeeded to the status based on a development permit; and in the case where an heir or testamentary donee by universal succession has succeeded to the project for the development due to the death of the individual carrying out the development, and where the heir or testamentary donee by universal succession then carries out the development, such individual is to be the deceased individual who was to carry out the development or the heir or testamentary donee by universal succession; the same applies in paragraph (7)) (in the case where this status has been succeeded to based on a development permit, such corporation is to be a corporation that was the transferor of the status succeeded to based on the development permit that was to carry out the development, or the corporation that has succeeded to the status based on the development permit; in the case where the corporation carrying out the development has

extinguished as a result of a merger, and the merging corporation that was involved in the merger has succeeded to the project for the development and carries out the development, such corporation is to be the extinguished corporation that was to carry out the development or the merging corporation; and in the case where the corporation carrying out the development has been split off, and the succeeding corporation in the company split that was involved in the company split has succeeded to the project for the development and carries out the development, such corporation is to be the split-off corporation that was to carry out the development or the succeeding corporation in the company split; the same applies in paragraph (7)), with the transferred land, etc. being used for the unit of residential land (excluding that which falls under the category of a transfer listed in item (i), item (ii), or items (vi) through (viii) or any other transfer of land, etc. specified by Cabinet Order):

- (a) that the area of the unit of residential land is 1000 square meters or larger (for the area of a unit of residential land within a district specified as an urbanization control area as set forth in Article 7, paragraph (1) of the City Planning Act or any other district specified by Cabinet Order, larger than specified by Cabinet Order);
  - (b) that the development of the unit of residential land is carried out by obtaining the permission set forth in Article 29, paragraph (1) of the City Planning Act (limited to the permission for development prescribed in Article 4, paragraph (12) of the Act that is carried out within a city planning district prescribed in paragraph (2) of the Article; hereinafter referred to in this paragraph as "a development permit") or the approval set forth in Article 4, paragraph (1), Article 14, paragraph (1) or paragraph (3), or Article 51-2, paragraph (1) of the Land Readjustment Act, and is deemed to be carried out in conformity with the details of the a development permit or approval; and
  - (c) that in cases where the development of the unit of residential land is carried out by obtaining a development permit, it meets the requirements specified by Order of the Ministry of Finance that public facilities also be developed appropriately along with the development of the residential land.
- (xiii) transfer of land, etc. to an individual or a corporation that is to carry out the development of a unit of residential land (limited to the development of a unit of residential land carried out as a residential land development project as prescribed in Article 4, paragraph (1), item (vii) of the Act on Emergency Measures Concerning Promotion of Development of Good Residential Lands in Metropolitan Areas, which is specified by Cabinet Order) after obtaining the authorization set forth in Article 3, paragraph (1) of the Act and a development permit (in the case where this status has been succeeded to

- based on the authorization of a plan as prescribed in Article 13 of the Act or has been succeeded to based on a development permit as prescribed in Article 44 or Article 45 of the City Planning Act (hereinafter referred to in this item as "status succeeded to based on authorization, etc."), such individual is to be the individual who is the transferor of the status succeeded to based on authorization, etc. who was to carry out the development or an individual who has succeeded to the status based on authorization, etc.; the same applies in paragraph (7)) (in the case where this status has been succeeded to based on authorization, etc., such corporation is to be the corporation that is the transferor of the status succeeded to based on authorization, etc. that was to carry out the development or a corporation that has succeeded to the status based on authorization, etc.; the same applies in paragraph (7)), with the transferred land, etc. being used for the unit of residential land (excluding that which falls under the category of a transfer listed in item (i), item (ii), or the preceding item);
- (xiv) transfer of land, etc. to an individual or a corporation that is to carry out the development of a unit of residential land for use in residential construction (limited to that which meets the following requirements) after obtaining a development permit (in the case where this status has been succeeded to based on the development permit prescribed in Article 44 or Article 45 of the City Planning Act, such individual is to be the individual who was the transferor in the succession who was to carry out the development or an individual who has succeeded to the status; the same applies in paragraph (7)) (in the case where this status has been succeeded to based on the development permit prescribed in Article 44 or Article 45 of the Act, such corporation is to be the corporation that was the transferor in the succession that was to carry out the development or the corporation that has succeeded to that status; the same applies in paragraph (7)), with the transferred land, etc. being used for the unit of residential land (excluding that which falls under the category of a transfer listed in items (vi) through (viii), or item(xii)):
- (a) that the area of the unit of residential land is 1000 square meters or larger (for the area of a unit of residential land within a district where the area that requires a development permit is less than 1000 square meters, larger than specified by Cabinet Order).; and
- (b) that the development of the unit of residential land is deemed to be carried out in conformity with the details of the development permit.
- (xv) in cases where a development permit is not required for development of a unit of residential land, the transfer of land, etc. to an individual or a corporation that is to carry out the development of the unit of residential land for use in residential construction (limited to that which meets the

following requirements) (in the case where an heir or testamentary donee by universal succession has succeeded to the project for the development due to the death of the individual who was carrying out the development, and where the heir or testamentary donee by universal succession then carries out the development, such individual is to be the deceased individual who was to carry out the development or the heir or testamentary donee by universal succession; the same applies in paragraph (7)) (in the case where the corporation carrying out the development has extinguished as a result of a merger and a merging corporation that was involved in the merger has succeeded to the project for the development and carries out the development, such corporation is to be the extinguished corporation that was to carry out the development or the merging corporation; and in the case where the corporation carrying out the development has been split off and the succeeding corporation in the company split that was involved in the company split has succeeded to the project for the development and carries out the development, such corporation is to be the split-off corporation that was to carry out the development or the succeeding corporation in the company split; the same applies in paragraph (7)), with the transferred land, etc. being used for the unit of residential land (excluding that which falls under the category of a transfer listed in items (vi) through (viii), or item (xii), or a transfer of land, etc. specified by Cabinet Order):

- (a) that the area of the unit of residential land is 1000 square meters or larger (for the area of a unit of residential land within a district specified by Cabinet Order, larger than specified by Cabinet Order);
- (b) that the development is carried out within a city planning district as prescribed in Article 4, paragraph (2) of the City Planning Act; and
- (c) that the development of the unit of residential land is carried out by obtaining authorization from the prefectural governor, as specified by Cabinet Order, as a project contributing to supplying good residential land to be used for constructing houses, and is deemed to be carried out in conformity with the details of the authorization.

(xvi) transfer of land, etc. to an individual or a corporation that is to construct a group of houses or mid-to-high-rise fire-resistant housing (limited to that which meets the following requirements) (in the case where an heir or testamentary donee by universal succession has succeeded to the project for the construction due to the death of the individual carrying out the development, and where the heir or testamentary donee by universal succession then carries out the construction, such individual is to be the deceased individual who was to carry out the construction or the heir or testamentary donee by universal succession; the same applies in the following item and paragraph (7)) (in the case where the corporation carrying



out the construction has extinguished as a result of a merger and the merging corporation that was involved in the merger has succeeded to the project for the construction and carries out the construction, such corporation is to be the extinguished corporation that was to carry out the construction or the merging corporation; and in the case where the corporation carrying out the construction has been split off and the succeeding corporation in the company split that was involved in the company split has succeeded to the project for the construction and carries out the construction, such corporation is to be the split-off corporation that was to carry out the construction or the succeeding corporation in the company split; the same applies in the following item and paragraph (7)), with the transferred land, etc. being used for constructing the group of houses or mid-to-high-rise fire-resistant housing (excluding that which falls under the category of a transfer listed in items (vi) through (ix), item (xii), or the preceding two items):

- (a) that a group of houses satisfy the requirement that the number of houses to be constructed is 25 or more;
- (b) that mid-to-high-rise fire-proof housing, satisfies the requirement that independent units to be used as residences (meaning the units equivalent to those of a building as prescribed in Article 2, paragraph (1) of the Act on Unit Ownership, etc. of Building) are 15 or more or that the floor area of the mid-to-high-rise fire-proof housing is 1000 square meters or larger, as well as any other requirements as specified by Cabinet Order;
- (c) that these are constructed within a city planning district prescribed in (b) of the preceding item; and
- (d) that the construction of the group of houses or mid-to-high-rise fire-proof housing is carried out by obtaining authorization from the prefectural governor, as specified by Cabinet Order, as a project contributing to supplying good houses (for mid-to-high-rise fire-proof housing with a land area of less than 1000 square meters, by obtaining such authorization from the municipal mayor).

(xvii) transfer of land, etc. (limited to land, etc. within a district for a land readjustment project as prescribed in Article 2, paragraph (4) of the Land Readjustment Act carried out under the Act, for which provisional substitute land has been designated under Article 98, paragraph (1) of the Act (including the case where the land or the part thereof subject to the right to provisionally use or to receive proceeds therefrom has been designed; hereinafter the same applies in this item)) to an individual or a corporation that constructs a house or mid-to-high-rise fire-proof housing (limited to that which meets the following requirements), which is made not later than December 31 of the year that includes the day on which three years have elapsed from the day on which the designation has become effective (in the

case where the day on which the individual or the corporation may start using or receiving proceeds from the right is determined pursuant to the provisions of Article 99, paragraph (2) of the Act, from that day), with the land, etc. designated as provisional substitute land for the transferred land, etc. being used for constructing the house or mid-to-high-rise fire-proof housing (excluding that which falls under the category of a transfer listed in items (vi) through (ix), item (xii), or the preceding three items):

- (a) that the house satisfies the requirements specified by Cabinet Order concerning the floor area of the house to be constructed and the land area for constructing the house;
- (b) that mid-to-high-rise fire-proof housing satisfies the requirements specified by Cabinet Order as prescribed in (b) of the preceding item; and
- (c) that a house or mid-to-high-rise fire-proof housing is deemed to be in conformity with the Building Standards Act and other housing-related laws and regulations.

(5) The provisions of the preceding paragraph apply *mutatis mutandis* in the case where a corporation has made transfer of its land, etc. during the period from January 1, 1992 to December 31, 2008 and when the transfer of the land, etc. falls under the category of a transfer for a determined site for constructing a superior residential area, etc. (meaning transfer that has been certified, as specified by Order of the Ministry of Finance, as highly likely to fall under the category of a transfer of land, etc. listed in items (xii) through (xvii) of the preceding paragraph during the period from the date of the transfer up to December 31 of the year that includes the day on which two years have elapsed after that date (in the case where the period required for developing residential land to be used for constructing houses generally exceeds two years or there are any other unavoidable reason specified by Cabinet Order, during the period from the date of the transfer up to the date specified by Cabinet Order; referred to in paragraph (7) and paragraph (8) as the "planned period"). In this case, the term "when it has been certified, as specified by Order of the Ministry of Finance, that the transfer of the land, etc. falls under the category of the following transfers of land, etc." in the preceding paragraph is deemed to be replaced with "when the transfer of land, etc. falls under the category of a transfer for a determined site for constructing a superior residential area, etc. prescribed in the following paragraph."

(6) In the case referred to in paragraph (4) (including the case where it is applied *mutatis mutandis* pursuant to the preceding paragraph; hereinafter the same applies in this paragraph and paragraph (9)), when a corporation is subject to the provisions of Article 65-4, paragraph (1) with regard to its land, etc. that has come to fall under the case listed in item (iii) of the paragraph, the transfer of the land, etc. is deemed not to fall under the category of a transfer of land,

etc. falling under the provisions of paragraph (4).

- (7) An individual or a corporation carrying out the development set forth in paragraph (4), items (xii) through (xv) or the construction set forth in item (xvi) or item (xvii) of the paragraph, that has purchased land, etc. pertaining to the transfer to which the provisions of paragraph (5) apply (for the transfer of land, etc. in a consolidated business year, to which the provisions of Article 68-68, paragraph (5) applies), when the transfer in whole or in part has come to fall under the category of a transfer of land, etc. listed in items (xii) through (xvii) of the paragraph during the planned period, must deliver the document specified by Order of the Ministry of Finance that certifies that the transfer of the land, etc. has come to fall under such category, without delay to the corporation that transferred the land, etc. to which the provisions apply.
- (8) Where the transfer of land, etc. in whole or in part to which the provisions of paragraph (5) apply (for the transfer of land, etc. in a consolidated business year, to which the provisions of Article 68-68, paragraph (5) applies) (in the case where the corporation is a merging corporation, including transfers of land, etc., in which a merged corporation involved in the merger is subject to the provisions of paragraph (5) (for transfer of land, etc. of the merged corporation in a consolidated business year, subject to the provisions of paragraph (5) of the Article)), does not fall under the category of a transfer of land, etc. listed in paragraph (4), items (xii) through (xvii) as of the last day of the planned period, the amount of corporation tax to be imposed on the corporation on income for the business year containing the day or on liquidation income is to be, notwithstanding the provisions of Article 66, paragraphs (1) through (3) of the Corporation Tax Act (including the case where these provisions are applied pursuant to Article 102, paragraph (1), item (ii) of the Act), Article 99, and Article 143, paragraph (1) and paragraph (2) of the Act, the provisions of Article 42-4, paragraph (11), Article 42-5, paragraph (5), Article 42-6, paragraph (5), Article 42-7, paragraph (7), Article 42-9, paragraph (4), Article 42-10, paragraph (5), Article 42-11, paragraph (5), Article 62, paragraph (1), paragraph (1) of this Article, paragraph (1) of the following Article, Article 67-2, paragraph (1), and Article 68, paragraph (1), and the provisions of other corporation tax-related laws and regulations, the sum of the amount of corporation tax calculated pursuant to these provisions plus the amount obtained by multiplying the total capital gains from the transfer of land, etc. by the rate of five percent.
- (9) With regard to the application of the provisions of paragraph (1) in the case where a corporation has made a transfer of land, etc. (excluding a transfer of land, etc. falling under the provisions of paragraph (3) and paragraph (4) (including a transfer of land, etc. falling under the provisions of Article 68-68, paragraph (3) and paragraph (4)) (including the case where a merged

corporation, etc. as prescribed in Article 64-2, paragraph (4) or Article 68-71, paragraph (5) has succeeded to the amount of the special account prescribed in these provisions, from a merged corporation, splitting corporation, corporation making a capital contribution in kind, or corporation effecting a post-formation contribution of assets involved in the qualified merger, etc. (meaning a qualified merger, etc. prescribed in these provisions), which made the transfer of land, etc., pursuant to these provisions, or other cases specified by Cabinet Order), when there is any amount that has been included in deductible expenses, with regard to the transfer of land, etc., pursuant to the provisions of Article 50 of the Corporation Tax Act or the provisions of Articles 64 through 65-5 or Articles 65-7 through 66 (in the case where there is any amount that has been excluded from deductible expenses pursuant to the provisions of Article 65-6, the amount that remains after deducting the excluded amount; hereinafter referred to in this paragraph as the "amount included in deductible expenses"), the amount equivalent to the amount included in deductible expenses is to be deducted from the capital gains for the business year; and when there is any amount that has been included in gross profits, with regard to the transfer of land, etc., pursuant to the provisions of Article 64-2, paragraphs (9) through (12) (including the case where these provisions are applied mutatis mutandis pursuant to Article 65, paragraph (3)), Article 65-7, paragraph (4) (including the case where it is applied mutatis mutandis pursuant to Article 65-8, paragraph (14)), Article 65-7, paragraph (12) (including the case where it is applied mutatis mutandis pursuant to Article 65-8, paragraph (15)), Article 65-8, paragraphs (9) through (13), Article 65-12, paragraphs (10) through (13), or Article 65-14, paragraphs (10) through (13), the amount equivalent to the included amount is to be added to the capital gains for the business year.

- (10) The provisions of paragraph (5) apply only in the case where the corporation tax return form prescribed in Article 151, paragraph (1) of the Corporation Tax Act (excluding the amended return form prescribed in Article 2, item (xxxix) of the Act) has attached thereto the document specified by Order of the Ministry of Finance that certifies that the transfer of land, etc. falls under the category of a transfer for a determined site for constructing a superior residential area, etc. as prescribed in paragraph (5) and a document stating the amount specified by Cabinet Order as the capital gains from the transfer of land, etc., and any other matters specified by Order of the Ministry of Finance.
- (11) Where the provisions of paragraph (1) or paragraph (8) apply, the following applies:
- (i) with regard to the application of the provisions of Article 67 of the Corporation Tax Act, the term "paragraph (1) or paragraph (2) of the preceding Article" in paragraph (1) of the Article is deemed to be replaced

with "Article 62-3, paragraph (1) or paragraph (8) (Special Tax Rate Where a Transfer, etc. of Land Is Made) of the Act on Special Measures Concerning Taxation," and the term "paragraph (1) or paragraph (2) of the preceding Article" in paragraph (3) of the Article is deemed to be replaced with "Article 62-3, paragraph (1) or paragraph (8) of the Act on Special Measures Concerning Taxation."; and

(ii) with regard to the application of the provisions of Articles 42-4 through 42-7 and Articles 42-9 through 42-11, the term "and Article 42-11, paragraph (2), paragraph (3) and paragraph (5)" in Article 42-4, paragraph (1), Article 42-5, paragraph (2), Article 42-6, paragraph (2), Article 42-7, paragraph (2) and Article 42-9, paragraph (1) is deemed to be replaced with ", Article 42-11, paragraph (2), paragraph (3), and paragraph (5) and Article 62-3;" the term "and paragraph (2), paragraph (3), and paragraph (5) of the following Article" in Article 42-10, paragraph (2) is deemed to be replaced with ", paragraph (2), paragraph (3), and paragraph (5) of the following Article, and Article 62-3," and the term "and paragraph (2), paragraph (3), and paragraph (5) of the preceding Article" in Article 42-11, paragraph (2) is deemed to be replaced with ", paragraph (2), paragraph (3), and paragraph (5) of the preceding Article, and Article 62-3."

(12) Beyond what is provided for in the preceding paragraph, matters concerning the application of the provisions of the Corporation Tax Act and other laws and regulations related to the corporation tax, to filing of returns or refunds of corporation tax, and other necessary matters concerning the application of the provisions of paragraph (1), paragraph (5) or paragraph (8) are specified by Cabinet Order.

(13) The provisions of paragraph (1) do not apply to a transfer, etc. of land that a corporation has made during the period from January 1, 1998 through December 31, 2008.

## **Section 7-2 Special Provisions on Taxation on Transactions with Foreign Affiliates**

(Special Provisions on Taxation on Transactions with Foreign Affiliates)

Article 66-4 (1) Where a corporation has, in each business year beginning on or after April 1, 1986, conducted a transaction for the sale of assets, purchase of assets, provision of services or any other transaction with a foreign affiliate of the corporation (meaning a foreign corporation that has a relationship with the corporation whereby either corporation holds, directly or indirectly, shares or capital contributions that account for 50 percent or more of the total number or total amount of issued shares of or capital contributions to the other corporation (excluding the shares or capital contributions held by the other

corporation) or any other special relationship specified by Cabinet Order (referred to in the following paragraph and paragraph (6) as a "special relationship"); hereinafter the same applies in this Article), if the amount of the consideration received by the corporation from the foreign affiliate with respect to the transaction (excluding, depending on the category of foreign corporation listed in Article 141, items (i) through (iii) of the Corporation Tax Act corresponding to the foreign affiliate, a transaction from which the foreign affiliate earns the domestic source income listed in the relevant item, which is specified by Cabinet Order; hereinafter referred to in this Article as a "transaction with a foreign affiliate") is below the arm's length price or if the amount of the consideration paid by the corporation to the foreign affiliate with respect to the transaction is over the arm's length price, with regard to the application of the provisions of the Act and any other provisions concerning corporation tax on the corporation's income for the business year and its liquidation income due to dissolution (excluding dissolution as a result of a merger; hereinafter the same applies in this Article) (liquidation income includes the income of a corporation that is liable for corporation tax on liquidation income for the business year when liquidation is in progress, and any amount that is deemed to be liquidation income due to dissolution pursuant to the provisions of Article 103, paragraph (1), item (ii) of the Act; the same applies in paragraph (7)), the transaction with the foreign affiliate is deemed to have been conducted at the arm's length price.

- (2) The arm's length price prescribed in the preceding paragraph means the amount calculated by the method specified in each of the following items for the category of transaction listed in the relevant item corresponding to the transaction with the foreign affiliate:
- (i) sale or purchase of inventory assets: Any of the following methods (the method listed in (d) may be applied only where the methods listed in (a) through (c) are unavailable):
    - (a) comparable uncontrolled price method (meaning the method which uses, as the amount of the consideration for a transaction with a foreign affiliate, the amount equivalent to the amount of the consideration for a transaction wherein the seller and the buyer who are not in a special relationship have sold or bought inventory assets of the same type as the inventory assets pertaining to the transaction with the foreign affiliate, under circumstances where the transaction level, transaction volume and any other conditions are similar to those of the transaction with the foreign affiliate (in the case where such inventory assets of the same type have been sold or bought under circumstances where the transaction level, transaction volume and any other conditions are different from those of the transaction with the foreign affiliate, and any variance arising from such

- difference in the conditions can be adjusted, the amount of the consideration as adjusted is included);
- (b) resale price method (meaning the method which uses, as the amount of the consideration for a transaction with a foreign affiliate, the amount calculated by deducting, from the amount of the consideration gained by the buyer of the inventory assets involved in the transaction with the foreign affiliate for having sold the inventory assets to a person without a special relationship thereto (hereinafter referred to in this paragraph as the "resale price"), the amount of normal profit (meaning the amount calculated by multiplying the resale price by the normal profit margin specified by Cabinet Order);
  - (c) cost plus method (meaning the method which uses, as the amount of the consideration for a transaction with a foreign affiliate, the amount calculated by adding, to the amount of the cost incurred by the seller of the inventory assets involved in the transaction with the foreign affiliate for having acquired the inventory assets by purchase, manufacture or any other acts, the amount of normal profit (meaning the amount calculated by multiplying the amount of cost by the normal profit margin specified by Cabinet Order); or
  - (d) a method equivalent to the methods listed in (a) through (c) or any other method specified by Cabinet Order.
- (ii) a transaction other than the transaction listed in the preceding item: Any of the following methods (the method listed in (b) may be applied only where the method listed in (a) is unavailable):
- (a) a method equivalent to the methods listed in (a) through (c) of the preceding item; or
  - (b) a method equivalent to the method listed in (d) of the preceding item.
- (3) Any part of the amount of a contribution (meaning the amount of a contribution prescribed in Article 37, paragraph (7) of the Corporation Tax Act; hereinafter the same applies in this paragraph and the following paragraph) expended by a corporation in each business year, which has been paid to a foreign affiliate of the corporation (excluding any amount of contribution paid to a foreign affiliate that falls under the category of foreign corporation listed in Article 141, items (i) through (iii) of the Act, which is included in the amount of gross profits in the calculation of the foreign affiliate's income for the relevant business year), is not included in the amount of deductible expenses in the calculation of the amount of the corporation's income for the relevant business year (including the amount of income prescribed in Article 102, paragraph (1), item (i) of the Act). In this case, with regard to the application of the provisions of Article 37 of the Act to the corporation, the term "the following paragraph" in paragraph (1) of the Article is deemed to be

replaced with "the following paragraph or the provisions of Article 66-4, paragraph (3) of the Act on Special Measures Concerning Taxation (Special Provisions on Taxation of Transactions with a Foreign Affiliate)."

- (4) In the case where the provisions of paragraph (1) apply, any variance between the amount of the consideration for a transaction with a foreign affiliate and the arm's length price prescribed in the paragraph which pertains to the transaction with the foreign affiliate (excluding a variance that is deemed to be the amount of the contribution) is not included in the amount of deductible expenses in the calculation of the corporation's income for each business year (including the amount of income prescribed in Article 102, paragraph (1), item (i) of the Corporation Tax Act).
- (5) Any variance prescribed in the preceding paragraph that has arisen during the liquidation of a corporation is included in the value of residual property in the calculation of the amount of liquidation income arising from the dissolution of the corporation.
- (6) In the case specified by Cabinet Order where a corporation conducts a transaction with its foreign affiliate via another person (excluding any other foreign affiliate of the corporation, and a domestic corporation that has a special relationship to such other foreign affiliate; hereinafter referred to in this paragraph as a "non-affiliate"), the transaction between the corporation and the non-affiliate is deemed to be a transaction with the foreign affiliate by the corporation, and the provisions of paragraph (1) are applied thereto.
- (7) Where the relevant official of the National Tax Agency or the relevant official of the Tax Office or Regional Taxation Bureau with jurisdiction over a corporation's place for tax payment has requested the corporation to present or submit the books and documents that are considered to be necessary for the calculation of the arm's length price prescribed in paragraph (1) which pertains to a transaction with a foreign affiliate conducted by the corporation in each business year or copies of such books and documents (in the case where the corporation, instead of preparing or preserving such books and documents, prepares or preserves electromagnetic records (meaning records made in an electronic form, a magnetic form, or any other form not recognizable to human perception, which are used in information processing by computers), such electronic or magnetic records are included; the same applies in the following paragraph, paragraph (9) and paragraph (12), item (ii)), if the corporation has failed to present or submit these books and documents or copies thereof without delay, the district director may presume the amount calculated by the method listed in any of the following items (the method listed in item (ii) may be applied only where the method listed in (i) is unavailable) to be the arm's length price, and thereby make a reassessment prescribed in Article 2, item (xlili) of the Corporation Tax Act (referred to in paragraph (16) as a



"reassessment") or a determination prescribed in item (xliv) of the Article (referred to in paragraph (16) as a "determination") with respect to the corporation's amount of income or amount of loss for the relevant business year or the amount of liquidation income arising from its dissolution:

- (i) the method listed in paragraph (2), item (i), (b) or (c) or the method listed in paragraph (2), item (ii), (a) (excluding the method equivalent to the method listed in paragraph (2), item (i), (a)), which is applied based on the gross profit margin gained by another corporation from its business on condition that such other corporation's business is the same type as the corporation's business involving the transaction with the foreign affiliate, and that the size and other details are similar between the two businesses, or any other ratio specified by Cabinet Order as a ratio equivalent to the gross profit margin; or
  - (ii) a method specified by Cabinet Order as being similar to the method prescribed in paragraph (2), item (i), (d) or the method listed in paragraph (2), item (ii), (b) (limited to the method equivalent to the method specified by Cabinet Order).
- (8) The relevant official of the National Tax Agency or the relevant official of the Tax Office or Regional Taxation Bureau with jurisdiction over a corporation's place for tax payment may, when it is necessary in the examination concerning the transaction between the corporation and a foreign affiliate of the corporation, request the corporation to present or submit the books and documents preserved by the foreign affiliate or copies thereof. In this case, the corporation must endeavor to obtain the books and documents or copies thereof when requested to present or submit them.
- (9) Where a corporation has failed to present or submit the books and documents or copies thereof prescribed in paragraph (7) without delay, the relevant official of the National Tax Agency or the relevant official of the Tax Office or Regional Taxation Bureau with jurisdiction over the corporation's place for tax payment may, when it is necessary for the calculation of the corporation's arm's length price prescribed in paragraph (1) which pertains to a transaction with a foreign affiliate in each business year, ask questions of a person who is engaged in a business that is the same type as the corporation's business involving the transaction with the foreign affiliate, or inspect the books and documents concerning the business, to the extent considered necessary for such calculation.
- (10) The authority to ask questions or conduct an inspection pursuant to the provisions of the preceding paragraph is not construed as being granted for criminal investigation.
- (11) The relevant official of the National Tax Agency, the Regional Taxation Bureau, or the Tax Office, when asking questions or conducting an inspection

pursuant to the provisions of paragraph (9), must carry an identification card and present it to the person concerned when requested.

- (12) Any person who falls under any of the following is punished by a fine of not more than 100,000 yen:
- (i) a person who has failed to answer or who has given a false answer to the questions given by the relevant official pursuant to the provisions of paragraph (9) or who has refused, obstructed or avoided the inspection pursuant to the provisions of the paragraph; or
  - (ii) a person who has presented books and documents which contain false statements or records concerning the inspection set forth in the preceding item.
- (13) Where the representative person of a corporation (including the administrator of an association or foundation without juridical personality) or an agent, employee or other worker of a corporation or an individual has committed any of the acts of violation set forth in the preceding paragraph with regard to the operations of the corporation or individual, not only the offender is punished but also the corporation or individual is punished by the fine prescribed in the paragraph.
- (14) Where the provisions of the preceding paragraph apply to an association or foundation without juridical personality, its representative person or administrator represent the association or foundation without juridical personality with regard to its procedural act, and the legal provisions concerning criminal procedure that are applicable in the case where a corporation stands as the accused or the suspect apply *mutatis mutandis*.
- (15) A corporation, where it has conducted a transaction with a foreign affiliate of the corporation in each business year, must attach a document stating the foreign affiliate's name and the location of its head office or principal office and any other matters specified by Order of the Ministry of Finance, to the tax return (meaning a tax return prescribed in Article 2, item (xxxi) of the Corporation Tax Act) for the relevant business year.
- (16) A reassessment or determination (hereinafter referred to in this paragraph as a "reassessment or determination") or an assessment and determination prescribed in Article 32, paragraph (5) of the Act on General Rules for National Taxes (hereinafter referred to in this paragraph as an "assessment and determination"), which is listed in any of the following items, may be made within six years from the due date or other date specified in the relevant item, notwithstanding the provisions of Article 70, paragraphs (1) through (4) of the Act (excluding the part concerning the reassessment listed in paragraph (2), item (ii) and item (iii) of the Article (limited to a reassessment pertaining to the amount of net loss, etc. prescribed in the paragraph)). In this case, with regard to the application of the provisions of Article 70, paragraph (5) and

Article 71, paragraph (1) of the Act: in Article 70, paragraph (5) of the Act, the phrase "preceding paragraphs" is deemed to be replaced with "preceding paragraphs and the provisions of Article 66-4, paragraph (16) of the Act on Special Measures Concerning Taxation (Special Provisions on Taxation of Transactions with a Foreign Affiliate)"; in Article 71, paragraph (1) of the Act, the phrase "preceding Article" is deemed to be replaced with "preceding Article and the provisions of Article 66-4, paragraph (16) of the Act on Special Measures Concerning Taxation (Special Provisions on Taxation of Transactions with a Foreign Affiliate)," and the phrase "preceding Article" is deemed to be replaced with "preceding Article and the paragraph [Article 66-4, paragraph (16) of the Act]."

- (i) a reassessment or determination of corporation tax to be made based on the fact that a corporation has conducted a transaction with a foreign affiliate of the corporation at the amount of consideration that is different from the arm's length price prescribed in paragraph (1), or a reassessment or determination of corporation tax to be made, upon the reassessment or determination, to make a change to the tax base, etc. or tax amount, etc. prescribed in Article 19, paragraph (1) of the Act on General Rules for National Taxes: The statutory due date of tax return prescribed in Article 2, item (vii) of the Act with regard to corporation tax pertaining to the relevant reassessment or determination (for a reassessment based on a return of claim for a refund prescribed in Article 61, paragraph (1) of the Act: the day on which the return of claim for a refund has been filed); and
  - (ii) a reassessment or determination of corporation tax to be made based on the fact prescribed in the preceding item or submission of a tax return form prescribed in Article 2, item (vi) of the Act on General Rules for National Taxes (excluding a return form within the due date prescribed in Article 17, paragraph (2) of the Act; hereinafter referred to in this item as a "tax return form"), or an assessment and determination to be made, upon the reassessment or determination or submission of a tax return form, so as to impose additional tax prescribed in Article 69 of the Act with regard to the corporation tax to which the change prescribed in the preceding item should be made upon the reassessment or determination or the submission of a tax return form: The date of the establishment of the relevant tax liability.
- (17) Where, with regard to corporation tax, the tax amount payable due to the fact that a corporation has conducted a transaction with a foreign affiliate of the corporation at the amount of consideration that is different from the arm's length price prescribed in paragraph (1) falls short, or the amount of the refund prescribed in Article 2, item (vi) of the Act on General Rules for National Taxes is in excess, the prescription of the right of collection of national taxes prescribed in Article 72, paragraph (1) of the Act does not run

for one year from the statutory due date prescribed in Article 72, paragraph , paragraph (1) of the Act for the corporation tax, except where the provisions of Article 73, paragraph (3) of the Act apply.

- (18) In the case referred to in the preceding paragraph, the provisions of the proviso of Article 73, paragraph (3) of the Act on General Rules for National Taxes apply mutatis mutandis. In this case, the phrase "two years" in the proviso is deemed to be replaced with "one year."
- (19) Where the provisions of paragraph (1) apply, and with respect to the arm's length price prescribed in paragraph (1) which pertains to a transaction with a foreign affiliate conducted between a corporation and its foreign affiliate (limited to a foreign affiliate who is deemed, pursuant to the provisions of a convention prescribed in Article 139 of the Corporation Tax Act (hereinafter referred to in this paragraph and paragraph (1) of the following Article as a "tax convention"), to be a resident or corporation in a Contracting State other than Japan (hereinafter referred to in the this paragraph and paragraph (1) of the following Article as the "other Contracting State") of the tax convention), the Minister of Finance has reached an agreement under the tax convention with the competent authority of the other Contracting State, or any other requirement specified by Cabinet Order has been satisfied, the regional commissioner or the district director may, pursuant to the provisions of Cabinet Order, grant an exemption from the part of the delinquent tax imposed with regard to the corporation tax payable by the corporation pursuant to the provisions of paragraph (1), which corresponds to the base period for the calculation of the delinquent tax for which the Minister of Finance has reached an agreement with the competent authority of the other Contracting State.
- (20) Matters concerning the determination as to whether or not a foreign corporation falls under the category of foreign affiliate, and other necessary matters concerning the application of the provisions of paragraph (1) to paragraph (7) are specified by Cabinet Order.

(Grace Period for Tax Payment under the Special Provisions on Taxation of Transactions with a Foreign Affiliate)

Article 66-4-2 (1) Where a domestic corporation has, pursuant to the provisions of a tax convention, filed an objection prescribed in the tax convention with the Commissioner of the National Tax Agency (including the cases where a foreign corporation has, pursuant to the provisions of a tax convention, filed an objection prescribed in the tax convention with the competent authority of the other Contracting State which is the State of the foreign corporation), the district director, etc. (meaning the district director, etc. prescribed in Article 46, paragraph (1) of the Act on General Rules for National Taxes; hereinafter the same applies in this Article) may, upon application by the corporation that has

filed the objection, grant a grace period for tax payment, up to the amount calculated pursuant to the method specified by Cabinet Order as the amount of corporation tax payable based on the reassessment or determination listed in paragraph (16), item (i) of the preceding Article which pertains to the objection (limited to the amount to be covered by the consultation prescribed in the tax convention with the other Contracting State which pertains to the objection), including the amount of additional tax prescribed in Article 69 of the Act with regard to the amount of corporation tax, for the period from the due date for tax payment (meaning the due date for tax payment prescribed in Article 37, paragraph (1) of the Act; in the case where the application has been filed after the due date for tax payment, the period start from the date of the filing of the application) until the day on which one month has elapsed since the day following the day on which a reassessment has been made pursuant to the provisions of Article 26 of the Act based on an agreement with the competent authority of the other Contracting State (in the case where there is no such agreement or in any other case specified by Cabinet Order: the date specified by Cabinet Order) (this period is referred to as the "grace period for tax payment" in paragraph (7)); provided, however, that this does not apply where the corporation that has filed the application has been, at the time of filing the application, delinquent in payment of national taxes other than the amount of corporation tax.

- (2) The district director, etc., when granting a grace period for tax payment pursuant to the provisions of the preceding paragraph (hereinafter referred to in this Article as a "grace period for tax payment"), must collect security equivalent to the amount under the grace period; provided, however, that this does not apply where the tax amount under the grace period is not more than 500,000 yen or where there are special circumstances where it is impossible to collect security.
- (3) The provisions of Article 46, paragraph (6) of the Act on General Rules for National Taxes apply mutatis mutandis where security is collected pursuant to the provisions of the preceding paragraph.
- (4) The provisions of Article 47 and Article 48 of the Act on General Rules for National Taxes apply mutatis mutandis where a grace period for tax payment is granted or is not granted. In this case, the phrase "paragraphs (1) through (3) or paragraph (7) of the preceding Article" in Article 47, paragraph (2) of the Act is deemed to be replaced with "Article 66-4-2, paragraph (1) of the Act on Special Measures Concerning Taxation (Grace Period for Tax Payment under the Special Provisions on Taxation of Transactions with a Foreign Affiliate)."
- (5) Where a corporation that has been granted a grace period for tax payment falls under any of the cases listed in the following items, the district director, etc. may rescind the grace. In this case, the provisions of Article 49, paragraph

- (2) and paragraph (3) of the Act on General Rules for National Taxes applies *mutatis mutandis*:
- (i) where the corporation has withdrawn the application set forth in paragraph (1);
  - (ii) where the corporation does not cooperate in the submission of the necessary documents for the consultation set forth in paragraph (1);
  - (iii) where there is a fact that falls under any of the items of Article 38, paragraph (1) of the Act on General Rules for National Taxes, and it is found to be impossible for the corporation to pay the corporation tax under the grace period in full within the period;
  - (iv) where the corporation does not follow the order issued by the district director, etc. pursuant to the provisions of Article 51, paragraph (1) of the Act on General Rules for National Taxes with regard to the security provided for the corporation tax under the grace period; or
  - (v) beyond what is listed in the preceding items, where it is found to be inappropriate to maintain the grace period due to any change in the state of the corporation's property or other circumstances.
- (6) With regard to the application of the provisions of the Act on General Rules for National Taxes and the National Tax Collection Act to corporation tax under a grace period for tax payment: in the Act on General Rules for National Taxes, the term "grace period for tax payment" in Article 2, item (viii) is deemed to be replaced with "grace period for tax payment (including a grace period for tax payment pursuant to the provisions of Article 66-4-2, paragraph (1) of the Act on Special Measures Concerning Taxation (Grace Period for Tax Payment under the Special Provisions on Taxation of Transactions with a Foreign Affiliate))", the term "grace period for tax payment" in Article 52, paragraph (1) is deemed to be replaced with "grace period for tax payment (including a grace period for tax payment pursuant to the provisions of Article 66-4-2, paragraph (1) of the Act on Special Measures Concerning Taxation (Grace Period for Tax Payment under the Special Provisions on Taxation on Transactions with a Foreign Affiliate)); hereinafter the same applies in this paragraph)", and the term "grace period for tax payment" in Article 55, paragraph (1), item (i) and Article 73, paragraph (4) is deemed to be replaced with "grace period for tax payment (including a grace period for tax payment pursuant to the provisions of Article 66-4-2, paragraph (1) of the Act on Special Measures Concerning Taxation (Grace Period for Tax Payment under the Special Provisions on Taxation of Transactions with a Foreign Affiliate))"; in the National Tax Collection Act, the term "grace period for tax payment" in Article 2, item (ix) and item (x) is deemed to be replaced with "grace period for tax payment (including a grace period for tax payment pursuant to the provisions of Article 66-4-2, paragraph (1) of the Act on Special Measures

Concerning Taxation (Grace Period for Tax Payment under the Special Provisions on Taxation of Transactions with a Foreign Affiliate))", and the term "Grace Period for Tax Payment)" in Article 151, paragraph (1) is deemed to be replaced with "Grace Period for Tax Payment) (including a grace period for tax payment pursuant to the provisions of Article 66-4-2, paragraph (1) of the Act on Special Measures Concerning Taxation (Grace Period for Tax Payment under the Special Provisions on Taxation of Transactions with a Foreign Affiliate))".

- (7) Where a grace period for tax payment has been granted, exemption is granted from the part of the delinquent tax imposed with regard to the corporation tax under the grace period, which corresponds to the grace period for tax payment (in the case where the application set forth in paragraph (1) has been filed before the due date for tax payment set forth in the paragraph, the grace period for tax payment includes the period from the date of the filing of the application until the due date for tax payment); provided, however, that where any event has occurred which can be the cause of a rescission pursuant to the provisions of paragraph (5), the district director, etc. may choose not to grant exemption with regard to such part of delinquent tax which corresponds to the period after the day on which the event has occurred.
- (8) Necessary matters concerning the procedure for the application for a grace period for tax payment are specified by Cabinet Order.

### **Section 7-3 Special Provisions on Taxation of the Interest on Liabilities Payable to a Foreign Controlling Shareholder**

(Special Provisions on Taxation of the Interest on Liabilities Payable to a Foreign Controlling Shareholder)

- Article 66-5 (1) Where a domestic corporation pays, in each business year beginning on or after April 1, 1992, interest on liabilities, etc. to its foreign controlling shareholder, etc. or fund provider, etc., and the average balance of liabilities regarding the liabilities owed, for the relevant business year, to its foreign controlling shareholder, etc. and fund provider, etc. exceeds threefold the amount of equity interest held by the foreign controlling shareholder, etc. for the relevant business year, the amount calculated pursuant to the method specified by Cabinet Order as such excess in the amount of interest on liabilities, etc. payable by the domestic corporation to its foreign controlling shareholder, etc. and fund provider, etc. in the relevant business year is not included in the amount of deductible expenses in the calculation of the amount of income of the domestic corporation for the relevant business year (including the amount of income prescribed in Article 102, paragraph (1), item (i) of the Corporation Tax Act); provided, however, that this does not apply where the

average balance of liabilities regarding the total liabilities of the domestic corporation for the relevant business year (limited to those which can be the cause of payment of interest on liabilities, etc.; the same applies in the following paragraph and paragraph (3)) is not more than threefold the amount of equity capital of the domestic corporation.

(2) Where the provisions of the preceding paragraph apply, and the domestic corporation has any liabilities arising from a specified bond transaction with a repurchase/resale agreement, etc. among its liabilities owed to its foreign controlling shareholder, etc. and fund provider, etc., the domestic corporation may use, as the multiple number applicable to the equity interest held by its foreign controlling shareholder, etc. or applicable to the amount of equity capital of the domestic corporation, the multiple number applicable to the equity interest held by the foreign controlling shareholder, etc. or applicable to the amount of equity capital, which is calculated pursuant to the method specified by Cabinet Order based on [1] the average balance of liabilities calculated by deducting the average balance of liabilities regarding the specified bond transaction with a repurchase/resale agreement, etc. calculated pursuant to the method specified by Cabinet Order from the average balance of liabilities regarding the liabilities owed to the foreign controlling shareholder, etc. and fund provider, etc., or [2] the average balance of liabilities calculated by deducting the average balance of liabilities regarding the specified bond transaction with a repurchase/resale agreement, etc. calculated pursuant to the method specified by Cabinet Order from the average balance of liabilities regarding the total liabilities for the relevant business year, and thereby determine the amount calculated by deducting the amount of interest on liabilities, etc. arising from the specified bond transaction with a repurchase/resale agreement, etc. calculated pursuant to the method specified by Cabinet Order from the amount of interest on liabilities, etc. payable to the domestic corporation's foreign controlling shareholder, etc. and fund provider, etc., to be the amount of interest on liabilities, etc. payable to its foreign controlling shareholder, etc. and fund provider, etc. In this case, the term "threefold" in the preceding paragraph is to be replaced with "twofold."

(3) Where the provisions of paragraph (1) apply, the domestic corporation may use, in lieu of the multiple number applicable to the equity interest held by a foreign controlling shareholder, etc. of the domestic corporation and applicable to the amount of equity capital of the domestic corporation, a multiple number that is found to be appropriate in light of the percentage specified by Cabinet Order as the percentage of the total liabilities of another domestic corporation to its net assets on condition that such other domestic corporation's business is the same type as the domestic corporation's business, and the size and other details are similar between the two businesses.



- (4) In this Article, the meanings of the terms listed in the following items are as prescribed respectively in those items:
- (i) foreign controlling shareholder, etc.: A nonresident prescribed in Article 2, paragraph (1), item (i)-2 (referred to in item (ix) as a "nonresident") or a foreign corporation who has a relationship with a domestic corporation whereby the nonresident or foreign corporation holds, directly or indirectly, shares or capital contributions that account for 50 percent or more of the total number or the total amount of issued shares of or capital contributions to the domestic corporation (excluding the shares or capital contributions held by the domestic corporation) or any other special relationship specified by Cabinet Order;
  - (ii) fund provider, etc.: A person who provides a domestic corporation with funds, and a person specified by Cabinet Order as being related to such provision of funds;
  - (iii) interest on liabilities, etc.: Interest on liabilities (including moneys specified by Cabinet Order as being equivalent thereto; hereinafter the same applies in this item) and any other expense specified by Cabinet Order (excluding the interest on liabilities and any other expense specified by Cabinet Order, which are included in the taxable income of the person who is to receive payment thereof, and any other expense specified by Cabinet Order);
  - (iv) liabilities owed to a foreign controlling shareholder, etc. and a fund provider, etc.: Liabilities owed to a foreign controlling shareholder, etc. (limited to those which can be the cause of payment of interest on liabilities, etc.) and liabilities owed to a fund provider, etc. that are specified by Cabinet Order (limited to those which can be the cause of payment of interest on liabilities, etc.);
  - (v) average balance of liabilities: The amount calculated pursuant to the method specified by Cabinet Order as the average amount of liabilities;
  - (vi) equity interest held by a foreign controlling shareholder, etc.: The amount calculated pursuant to the method specified by Cabinet Order as the interest in a domestic corporation's net assets held by a foreign controlling shareholder, etc. for each business year;
  - (vii) amount of equity capital: The amount calculated pursuant to the method specified by Cabinet Order as the amount of net assets for each business year;
  - (viii) specified bond transaction with a repurchase/resale agreement, etc.: A bond transaction with a repurchase/resale agreement (meaning a bond transaction with a repurchase/resale agreement prescribed in Article 42-2, paragraph (1)) and a cash-secured bond lending transaction (meaning a transaction for borrowing or lending bonds secured by cash), which are

- specified by Cabinet Order; and
- (ix) taxable income: [For a resident prescribed in Article 2, paragraph (1), item (i)-2] each type of income (meaning each type of income prescribed in Article 2, paragraph (1), item (xxi) of the Income Tax Act) for each year; [for a domestic corporation] income for each business year (including the income of a corporation, which should file a return pursuant to the provisions of Article 102, paragraph (1) of the Corporation Tax Act, for each business year when liquidation is in progress) or consolidated income for each consolidated business year, or liquidation income; [for a nonresident or foreign corporation] domestic source income specified in the relevant provisions for the category of nonresident listed in Article 164, paragraph (1), items (i) through (iii) of the Income Tax Act corresponding to the nonresident or the category of foreign corporation listed in Article 141, items (i) through (iii) of the Corporation Tax Act corresponding to the foreign corporation, which is specified by Cabinet Order.
- (5) Any amount excluded from the amount of deductible expenses pursuant to the provisions of paragraph (1) that has arisen during the liquidation of a domestic corporation is included in the value of residual property in the calculation of the amount of the liquidation income arising from the dissolution (excluding dissolution as a result of a merger) of the domestic corporation.
- (6) The provisions of paragraph (2) apply only where a domestic corporation has filed a tax return, etc. with a document attached thereto stating that it seeks the application of the provisions of the paragraph and a written statement attached thereto concerning the calculation of the average balance of liabilities regarding the liabilities from a specified bond transaction with a repurchase/resale agreement, etc. and the amount of interest on liabilities, etc., both of which are deducted pursuant to the provisions of the paragraph, and preserved the documents on such calculation.
- (7) Even where a domestic corporation has filed a tax return, etc. without the document or written statement set forth in the preceding paragraph attached thereto or failed to preserve the documents on the calculation set forth in the paragraph, the district director may, when the find any unavoidable reason for the domestic corporation's failure to attach a necessary document or written statement or preserve the necessary documents on the calculation, apply the provisions of paragraph (2), only if the document and written statement as well as the documents on the calculation are submitted.
- (8) The provisions of paragraph (3) apply only where a domestic corporation has filed a tax return, etc. with a document attached thereto stating that it seeks the application of the paragraph, and preserved documents or any other materials (referred to in the following paragraph as "materials, etc.") that certify that the multiple number that it applies is appropriate.

- (9) Even where a domestic corporation has filed a tax return, etc. without a document attached thereto stating that it seeks the application of the provisions of paragraph (3) or failed to preserve the materials, etc. that certify that the multiple number that it applies is appropriate, the district director may, when they find any unavoidable reason for the domestic corporation's failure to attach a necessary document or preserve the necessary materials, etc., apply the provisions of the paragraph, only if the document and the materials, etc. are submitted.
- (10) The provisions of paragraph (1) through paragraph (4) and paragraph (6) to the preceding paragraph apply mutatis mutandis to interest on liabilities, etc. paid by a foreign corporation that conducts a business in Japan (such interest on liabilities, etc. is limited to that pertaining to the business conducted in Japan). In this case: in paragraph (1), the phrase "the domestic corporation" is deemed to be replaced with "the foreign corporation," the term "interest on liabilities, etc." is deemed to be replaced with "interest on liabilities, etc. (limited to that pertaining to the business conducted by the foreign corporation in Japan (hereinafter referred to in this paragraph and paragraph (3) as "business in Japan"; hereinafter the same applies in this paragraph and the following paragraph)", the term "liabilities" is deemed to be replaced with "liabilities (limited to those arising from the business in Japan; the same applies in the following paragraph)", the term "equity interest" is deemed to be replaced with "equity interest (limited to that pertaining to the business in Japan; the same applies in the following paragraph and paragraph (3)", the phrase "limited to those which can be the cause of payment of interest on liabilities, etc.; the same applies in the following paragraph and paragraph (3)" is deemed to be replaced with "limited to those which can be the cause of payment of interest on liabilities, etc. and pertain to the business in Japan; hereinafter the same applies in the following paragraph", and the term "amount of equity capital" is deemed to be replaced with "amount of equity capital (limited to that pertaining to the business in Japan; hereinafter the same applies in the following paragraph and paragraph (3)"; in paragraph (2), the term "domestic corporation" is deemed to be replaced with "foreign corporation"; in paragraph (3), the term "domestic corporation" is deemed to be replaced with "foreign corporation", the phrase "of the domestic corporation" is deemed to be replaced with "of the foreign corporation", the phrase "of the domestic corporation" is deemed to be replaced with "of the foreign corporation", the phrase "as the domestic corporation's business" is deemed to be replaced with "as the foreign corporation's business in Japan", the term "total liabilities" is deemed to be replaced with "total liabilities (limited to those which can be the cause of payment of interest on liabilities, etc.)"; in paragraph (4), item (i), the term "foreign corporation" is deemed to be replaced with

"another foreign corporation", the term "domestic corporation" is deemed to be replaced with "foreign corporation"; in paragraph (4), item (ii) and (vi), the term "domestic corporation" is deemed to be replaced with "foreign corporation".

(11) The calculation of the average balance of liabilities, etc. regarding liabilities prescribed in paragraph (1) in the case where there is more than one foreign controlling shareholder, etc. prescribed in the paragraph, the application of the provisions of the Corporation Tax Act with respect to the amount excluded from the amount of deductible expenses pursuant to the provisions of the paragraph, and other necessary matters concerning the application of the provisions of the paragraph through paragraph (4) are specified by Cabinet Order.

**Section 7-4 Special Provisions on Taxation of the Income of a Domestic Corporation's Specified Foreign Subsidiaries**  
**Subsection 1 Special Provisions on Taxation of the Income of a Domestic Corporation's Specified Foreign Subsidiaries**

(Inclusion in Gross Profits of Retained Income of Specified Foreign Subsidiaries of Domestic Corporations)

Article 66-6 (1) Where the foreign affiliate of any of the following domestic corporations, which falls under the category of foreign affiliate specified by Cabinet Order as a company whose tax burden to be imposed on its income earned in a state or territory where its head office or principal office is located is significantly lower than the tax burden to be imposed on the income of a corporation in Japan (hereinafter referred to in this Subsection as a "specified foreign subsidiary, etc."), in each business year beginning on or after April 1, 1978, retains as part of the amount of undistributed income, pursuant to the provisions of Cabinet Order, any amount that is adjusted, with respect to the amount of undistributed income, based on the tax amount pertaining to the amount of undistributed income and the amount of dividend of surplus, dividend of profit or distribution of surplus prescribed in Article 23, paragraph (1), item (i) of the Corporation Tax Act (hereinafter referred to in this paragraph and the following paragraph as "dividend of surplus, etc.") (such adjusted amount hereinafter referred to in this Article as "eligible retained income"), the amount equivalent to the part of eligible retained income which is calculated pursuant to the method specified by Cabinet Order as the amount of income corresponding to the number of shares, etc. of the specified foreign subsidiary, etc. held by the domestic corporation through direct and/or indirect ownership, while taking into consideration the contents of the claim (meaning a claim to demand dividend of surplus, etc., distribution of property and any other economic benefit; hereinafter the same applies in this paragraph and the

following paragraph) vested in such shares, etc. (meaning shares or capital contributions; the same applies in this paragraph and the following paragraph) (such part of eligible retained income hereinafter referred to in this Subsection as "taxable retained income") is deemed to be the amount of the domestic corporation's profit, and included in its gross profits in the calculation of the amount of its income for the business year that includes the day on which two months have elapsed since the day following the last day of the relevant business year:

- (i) a domestic corporation that holds shares, etc. of the foreign affiliate through direct and/or indirect ownership, the ratio of whose shares, etc. to the total number or total amount of issued shares of or capital contributions to the foreign affiliate (excluding the shares, etc. held by the foreign affiliate) (in the case where the foreign affiliated company is a corporation listed in (a) through (c): the ratio or the ratio listed in (a) through (c), whichever is larger; referred to in the following item as the "direct and/or indirect ownership ratio for shares, etc. of a foreign affiliate") is five percent or more:
    - (a) a corporation that issues shares, etc. in which more than one voting right (limited to a voting right pertaining to a resolution on dividend of surplus, etc.; hereinafter the same applies in this item and the following paragraph) is vested (excluding a corporation listed in (c)): The ratio of the number of voting rights in the foreign affiliate held by the domestic corporation through direct and/or indirect ownership to the total number of voting rights in the foreign affiliate;
    - (b) a corporation that issues shares, etc. in which different claims are vested (excluding a corporation listed in (c)): The ratio of the amount of dividend of surplus, etc. based on the claim for the foreign affiliate held by the domestic corporation through direct and/or indirect ownership to the total amount of dividend of surplus, etc. receivable based on the claims vested in the shares, etc. of the foreign affiliate; or
    - (c) a corporation that issues both shares, etc. in which more than one voting right is vested and shares, etc. in which different claims are vested: The ratio specified in (a) or the ratio specified in (b), whichever is larger.
  - (ii) a domestic corporation that belongs to a family shareholder group whose direct and/or indirect ownership ratio for shares, etc. of the foreign affiliated company is five percent or more (excluding the domestic corporation listed in the preceding item).
- (2) In the preceding paragraph and this paragraph, the meanings of the terms listed in the following items are as prescribed respectively in those items:
- (i) foreign affiliated company: A foreign corporation in which the ratio of the sum of the number or amount of shares, etc. held through direct and/or indirect ownership by residents (meaning residents prescribed in Article 2,

- paragraph (1), item (i)-2; hereinafter the same applies in this item and item (vi)), domestic corporations and specially-related nonresidents (meaning nonresidents prescribed in Article 2, paragraph (1), item (i)-2 who have a special relationship specified by Cabinet Order to residents or domestic corporations; hereinafter the same applies in this item) to the total number or total amount of issued shares or capital contributions (excluding the shares, etc. held by the foreign corporation) (in the case where the foreign corporation is a corporation listed in (a) through (c): the ratio or the ratio listed in (a) through (c), whichever is larger) is more than 50 percent:
- (a) a corporation that issues shares, etc. in which more than one voting right (excluding a corporation listed in (c)): The ratio of the sum of the number of voting rights in the foreign corporation held through direct and/or indirect ownership by residents, domestic corporations and specially-related nonresidents to the total number of voting rights in the foreign corporation;
  - (b) a corporation that issues shares, etc. in which different claims are vested (excluding a corporation listed in (c)): The ratio of the sum of the amount of dividend of surplus, etc. based on the claims for the foreign corporation held through direct and/or indirect ownership by residents, domestic corporations and specially-related nonresidents to the total amount of dividend of surplus, etc. receivable based on the claims vested in the shares, etc. of the foreign corporation; or
  - (c) a corporation that issues both shares, etc. in which more than one voting right is vested and shares, etc. in which different claims are vested: The ratio specified in (a) or the ratio specified in (b), whichever is larger.
- (ii) amount of undistributed income: An amount adjusted, with respect to the amount of income of a specified foreign subsidiary, etc. in its settlement of accounts for each business year, pursuant to the method specified by Cabinet Order, based on the amount calculated in accordance with the standards specified by Cabinet Order in a manner equivalent to the manner for calculating the amount of income for each business year pursuant to the Corporation Tax Act and this Act, in terms of the amount of loss incurred in each of the business years that commenced within seven years before the first day of the relevant business year;
- (iii) number of shares, etc. (held) through direct and/or indirect ownership: The sum of the number of shares of or amount of capital contributions to a foreign corporation held directly by an individual or domestic corporation and the number of shares of or amount of capital contributions to the foreign corporation specified by Cabinet Order as being held indirectly by the individual or domestic corporation via another foreign corporation;
- (iv) number of voting rights (held) through direct and/or indirect ownership:

- The sum of the number of voting rights in a foreign corporation held directly by an individual or domestic corporation and the number of voting rights in the foreign corporation specified by Cabinet Order as being held indirectly by the individual or domestic corporation via another foreign corporation;
- (v) amount of dividend of surplus, etc. based on the claims (held) through direct and/or indirect ownership: The sum of the amount of dividend of surplus, etc. receivable based on the claims in the shares, etc. of a foreign corporation held directly by an individual or domestic corporation and the amount of dividend of surplus, etc. receivable based on the claims in the shares, etc. of the foreign corporation specified by Cabinet Order as being held indirectly by the individual or domestic corporation via another foreign corporation; and
- (vi) family shareholder group: A group of persons who directly or indirectly hold shares, etc. of a foreign affiliate, within which a resident or domestic corporation has a special relationship specified by Cabinet Order to the rest of the persons in the group (excluding a foreign corporation).
- (3) With regard to the application of the provisions of paragraph (1) in the case where a specified foreign subsidiary, etc. of a domestic corporation listed in each item of paragraph (1) (excluding a company engaged in, as its principal business, the holding of shares (including capital contributions) or bonds, the provision of industrial property rights or any other rights concerning technology, production methods involving special technology or any other equivalent rights or methods (including the right to use these rights) or copyrights (including rights of publication, neighboring rights and any other equivalent rights) or the lending of vessels or aircrafts) has an office, store, factory or any other fixed facility that is considered to be necessary for conducting its principal business in the state or territory where its head office or principal office is located, and takes charge of managing, controlling and operating the business by itself (referred to as the "case where a specified foreign subsidiary, etc. has a fixed facility" in the following paragraph), the phrase "amount that is adjusted" in the paragraph is deemed to be replaced with "amount that is adjusted,..., after deducting therefrom the amount equivalent to ten percent of the amount of expense specified by Cabinet Order as a personnel expense for people engaged in the business at the specified foreign subsidiary, etc."
- (4) Where a specified foreign subsidiary, etc. prescribed in the preceding paragraph that is the specified foreign subsidiary, etc. of a domestic corporation listed in each item of paragraph (1) has a fixed facility in the state or territory where its head office or principal office is located, and falls under any of the cases listed in the following items depending on the type of business listed in the following items to which its principal business corresponds in each business year, the provisions of paragraph (1) and the preceding paragraph do

not apply to the eligible retained income of the specified foreign subsidiary, etc. for the relevant business year:

- (i) wholesale business, banking business, trust business, financial instruments business, insurance business, water transportation business or air transportation business: The case specified by Cabinet Order in which the specified foreign subsidiary, etc. conducts business mainly with a person other than [1] a resident listed in each item of Article 40-4, paragraph (1) who is the resident to which the specified foreign subsidiary, etc. pertains, [2] a domestic corporation listed in each item of paragraph (1) that is the domestic corporation of the specified foreign subsidiary, etc., [3] a consolidated corporation listed in each item of Article 68-90, paragraph (1) that is to the consolidated corporation of the specified foreign subsidiary, etc. or [4] any other person specified by Cabinet Order as being equivalent to the persons mentioned in [1] through [3]; or
  - (ii) business other than those listed in the preceding item: The case specified by Cabinet Order in which the specified foreign subsidiary, etc. conducts a business mainly in the state or territory where its head office or principal office is located (including the water areas belonging to the state or territory which are specified by Cabinet Order).
- (5) A domestic corporation listed in each item of paragraph (1) must attach a balance sheet and profit and loss statement for each business year regarding the specified foreign subsidiary, etc. of the domestic corporation as well as any other documents specified by Order of the Ministry of Finance, to its tax return (meaning a tax return prescribed in Article 2, item (xxxi) of the Corporation Tax Act; the same applies in the following paragraph) for the business year that includes the day on which two months have elapsed since the day following the last day of the relevant business year.
- (6) The provisions of paragraph (3) and paragraph (4) apply only where the domestic corporation has attached, to its tax return, a document stating that these provisions apply, and preserved documents or any other materials that certify that these provisions apply.
- (7) Where a domestic corporation holds, directly or indirectly, a beneficial right of a foreign trust (meaning a foreign investment trust prescribed in Article 2, paragraph (22) of the Act on Investment Trusts and Investment Corporations, which is similar to a specified investment trust prescribed in Article 68-3-3, paragraph (1); hereinafter the same applies in this paragraph), the trustee of the foreign trust is deemed to be a different person for each of the trust assets, etc. under the foreign trust (meaning assets and liabilities included in the trust property and profits and expenses attributed to the trust property; hereinafter the same applies in this paragraph) and the trustee's own assets, etc. (meaning the trustee's assets and liabilities as well as profits and expenses other than



those included in the trust assets, etc. under the foreign trust), and the provisions of this Article (excluding paragraph (3), paragraph (4) and the preceding paragraph) through Article 66-9 are applied thereto.

- (8) The provisions of Article 4-6, paragraph (2) and Article 4-7 of the Corporation Tax Act apply mutatis mutandis in the case where the provisions of the preceding paragraph are to apply.

Article 66-7 (1) Where a domestic corporation listed in each item of paragraph (1) of the preceding Article is subject to the provisions of the paragraph, any part of the amount of foreign corporation tax (meaning foreign corporation tax prescribed in Article 69, paragraph (1) of the Corporation Tax Act; the same applies in the following paragraph) to be imposed on the income of a specified foreign subsidiary, etc. of the domestic corporation, which is calculated pursuant to the method specified by Cabinet Order as corresponding to the taxable retained income of the specified foreign subsidiary, etc. (up to the amount equivalent to the taxable retained income), pursuant to the provisions of Cabinet Order, is deemed to be the amount of creditable foreign corporation tax (meaning the amount of creditable corporation tax prescribed in Article 69, paragraph (1) of the Act; hereinafter the same applies in this Subsection) paid by the domestic corporation, and the provisions of Article 69, paragraphs (1) through (7), paragraph (10) and paragraphs (15) through (18) are applied thereto. In this case, in paragraph (10) of the Article, the phrase "any part of the amount..., which is deemed to be payable by the domestic corporation pursuant to the provisions of paragraph (8)" is deemed to be replaced with "any part of the amount..., which is deemed to be payable by the domestic corporation pursuant to the provisions of paragraph (8) and any part of the amount of foreign corporation tax to be imposed on the income of a specified foreign subsidiary, etc. prescribed in Article 66-7, paragraph (1) of the Act on Special Measures Concerning Taxation (Credit for Foreign Tax on Taxable Retained Income of Specified Foreign Subsidiaries, etc. of Domestic Corporations), which is deemed to be payable by the domestic corporation pursuant to the provisions of Article 66-7, paragraph (1) of the Act", the phrase "any part of the amount..., which is deemed to be payable by the domestic corporation pursuant to the provisions of paragraph (8) of the Article" is deemed to be replaced with "any part of the amount..., which is deemed to be payable by the domestic corporation pursuant to the provisions of paragraph (8) and any part of the amount of foreign corporation tax to be imposed on the income of a specified foreign subsidiary, etc. prescribed in Article 68-91, paragraph (1) of the Act (Credit for Foreign Tax on Individually Taxable Retained Income of Specified Foreign Subsidiaries, etc. of Consolidated Corporations), which is deemed to be payable by the domestic corporation

pursuant to the provisions of Article 68-91, paragraph (1) of the Act", and the phrase "paragraphs (1) through (3) of the Article" is deemed to be replaced with "Article 81-15, paragraphs (1) through (3)."

- (2) Where a domestic corporation is, in each consolidated business year, subject to the provisions of paragraph (1) of Article 68-90 with respect to the amount equivalent to the individually taxable retained income prescribed in the paragraph of a specified foreign subsidiary, etc. prescribed in the paragraph that is the specified foreign subsidiary, etc. of the domestic corporation, if foreign corporation tax is imposed on the income of the specified foreign subsidiary, etc. during the period of each business year beginning after the last day of the consolidated business year during which the domestic corporation has been subject to the provisions, the individually taxable retained income of the specified foreign subsidiary, etc. is deemed to be the taxable retained income of a specified foreign subsidiary, etc. prescribed in the preceding paragraph, and the amount of the foreign corporation tax to be imposed on the income of a specified foreign subsidiary, etc. prescribed in paragraph (1) of the Article is deemed to be the amount of foreign corporation tax to be imposed on the income of a specified foreign subsidiary, etc. prescribed in the preceding paragraph respectively, and the provisions of the paragraph are applied thereto.
- (3) Where a domestic corporation listed in each item of paragraph (1) of the preceding Article is subject to the provisions of the paragraph with respect to the amount equivalent to the taxable retained income of a specified foreign subsidiary, etc. that is subject to the provisions of the paragraph, and the domestic corporation is also subject to the provisions of Article 69, paragraphs (1) through (3) of the Corporation Tax Act pursuant to the provisions of paragraph (1), the amount that is deemed to be the amount of creditable foreign corporation tax pursuant to the provisions of paragraph (1) is included in the amount of gross profits in the calculation of the amount of income of the domestic corporation for the business year specified by Cabinet Order.

Article 66-8 (1) Where an event listed in item (i) or item (ii) has occurred with regard to a specified foreign subsidiary, etc. of a domestic corporation that has been subject to the provisions of Article 66-6, paragraph (1), or where an event listed in item (iii) has occurred with regard to a foreign affiliate prescribed in Article 66-6, paragraph (2), item (i) (limited to a foreign affiliate that has received, from the specified foreign subsidiary, etc., payment of dividend of surplus, dividend of profit or distribution of surplus prescribed in Article 23, paragraph (1), item (i) of the Corporation Tax Act (hereinafter referred to in this paragraph as "dividend of surplus, etc.") (such payment includes the delivery listed in item (ii) of the amount specified in the item), which is

specified by Cabinet Order; hereinafter the same applies in this paragraph) that is the foreign affiliate of the domestic corporation, if the taxable retained income of the specified foreign subsidiary, etc. in each business year of the domestic corporation that commenced within ten years before the first day of the business year that includes the day on which the relevant event has occurred (hereinafter referred to in this Article as "each business year within the preceding ten years"), contains any amount included in the amount of gross profits in the calculation of the amount of the domestic corporation's income for each business year within the preceding ten years pursuant to the provisions of Article 66-6, paragraph (1) (excluding any amount included in the amount of deductible expenses for each business year within the preceding ten years pursuant to the provisions of this paragraph; hereinafter referred to in this Article and the following Article as "taxed amount of retained income"), such taxed amount of retained income is included in the amount of deductible expenses in the calculation of the amount of the domestic corporation's income for the business year that includes the day on which the relevant event has occurred, up to the amount equivalent to the amount calculated pursuant to the method specified by Cabinet Order as part of the amount specified by each of the following items for the type of event corresponding to the event that has occurred with regard to the specified foreign subsidiary, etc. or the foreign affiliated company, which is appropriated from the taxable retained income pertaining to the domestic corporation:

- (i) payment of dividend of surplus, etc.: The amount of dividend of surplus, etc. to be paid;
  - (ii) delivery of money or any other assets by reason of the occurrence of any of the events listed in the items of Article 24, paragraph (1) of the Corporation Tax Act: The amount equivalent to the amount of revenue reserves which is to be decreased due to the delivery; or
  - (iii) payment of dividend of surplus, etc. to the domestic corporation or delivery of money or any other assets to the to the domestic corporation by reason of the occurrence of any of the events listed in the items of Article 24, paragraph (1) of the Corporation Tax Act: The amount equivalent to the amount of revenue reserves which is to be decreased due to the amount of dividend of surplus, etc. to be paid or the delivery.
- (2) Where a domestic corporation has a consolidated business year that commenced within ten years before the first day of the business year that includes the day on which the event listed in any item of the preceding paragraph has occurred, and has an individually taxed amount of retained income (meaning the individually taxed amount of retained income prescribed in Article 68-92, paragraph (1); hereinafter the same applies in this Article) for the consolidated business year, with regard to the application of the provisions

of the preceding paragraph, such individually taxed amount of retained income is deemed to be a taxed amount of retained income for each business year within the preceding ten years which corresponds to the period of the consolidated business year.

(3) Where a domestic corporation has acquired, as a result of a qualified merger, qualified company split, qualified capital contribution in kind or qualified post-formation acquisition of assets (hereinafter referred to in this paragraph as a "qualified merger, etc."), the transfer of the whole or part of the number of shares, etc. of a specified foreign subsidiary, etc. held through direct and/or indirect ownership prescribed in Article 66-6, paragraph (2), item (iii) (hereinafter referred to in this paragraph as the "number of shares, etc. held through direct and/or indirect ownership") by the merged corporation, the splitting corporation, the corporation making a capital contribution-in-kind or the corporation effecting a post-formation contribution of assets, with regard to the application of the provisions of paragraph (1) in the business year that includes the date of the qualified merger, etc. and each subsequent business year of the domestic corporation, the amount specified in each of the following items for the category of qualified merger, etc. listed in the relevant item, pursuant to the provisions of Cabinet Order, is deemed to be the taxed amount of retained income of the domestic corporation for each business year within the preceding ten years:

(i) qualified merger: The taxed amount of retained income or individually taxed amount of retained income of the merged corporation involved in the qualified merger for each business year within ten years before the merger (meaning each business year or each consolidated business year that commenced within ten years before the date of the qualified merger);

(ii) qualified company split by split-off: Any part of the taxed amount of retained income or individually taxed amount of retained income of the splitting corporation involved in the qualified company split by split-off for each business year within ten years before the company split (meaning each business year or each consolidated business year that commenced within ten years before the date of the qualified company split by split-off; the same applies in the following paragraph), which is calculated pursuant to the method specified by Cabinet Order as the amount of income corresponding to the number of shares, etc. of the specified foreign subsidiary, etc. transferred to and therefore held by the domestic corporation through direct and/or indirect ownership as a result of the qualified company split by split-off, while taking into consideration the contents of the claim prescribed in Article 66-6, paragraph (1); or

(iii) qualified company split by spin-off, qualified capital contribution in kind or qualified post-formation acquisition of assets (hereinafter referred to in

this item as "qualified company split by spin-off, etc."): Any part of the taxed amount of retained income or individually taxed amount of retained income of the splitting corporation, corporation making a capital contribution in kind or corporation effecting a post-formation contribution of assets involved in the qualified company split by spin-off, etc. for each business year within ten years before the company split, etc. (meaning each business year or each consolidated business year that commenced within ten years before the first day of the business year that includes the date of the qualified company split by spin-off, etc., or each consolidated business year or each business year that commenced within ten years before the first day of the consolidated business year that includes the date of the qualified company split by spin-off, etc.; the same applies in the following paragraph), which is calculated pursuant to the method specified by Cabinet Order as the amount of income corresponding to the number of shares, etc. of the specified foreign subsidiary, etc. transferred to and therefore held by the domestic corporation through direct and/or indirect ownership as a result of the qualified company split by spin-off, while taking into consideration the contents of the claim prescribed in Article 66-6, paragraph (1).

- (4) Where the succeeding corporation in a company split, the corporation receiving capital contribution in kind or the corporation subject to a post-formation acquisition of assets (hereinafter referred to in this paragraph as the "succeeding corporation in a company split, etc.") involved in a qualified company split, qualified capital contribution in kind or qualified post-formation acquisition of assets (hereinafter referred to in this paragraph as a "qualified company split, etc.") is subject to the provisions of the preceding paragraph or Article 68-92, paragraph (3), with regard to the application of the provisions of paragraph (1) in the business year that includes the date of the qualified company split, etc. and each subsequent business year of the splitting corporation, the corporation making a capital contribution in kind or the corporation effecting a post-formation contribution of assets (hereinafter referred to in this paragraph as the "splitting corporation, etc.") involved in the qualified company split, etc., no part of the taxed amount of retained income of the splitting corporation, etc. for each business year within ten years before the company split or each business year within ten years before the company split, etc. is deemed to be the taxed amount of retained income of the succeeding corporation in a company split, etc. for each business year within the preceding ten years pursuant to the provisions of the preceding paragraph, or the individually taxed amount of retained income of the succeeding corporation in a company split, etc. for each consolidated business year within the preceding ten years (meaning each consolidated business year within the preceding ten years prescribed in paragraph (1) of the Article).

- (5) The provisions of paragraph (1) apply only where a domestic corporation has filed a tax return prescribed in Article 2, item (xxxii) of the Corporation Tax Act or a consolidated tax return prescribed in Article 2, item (xxxiii) of the Act for each business year after the earliest business year or consolidated business year pertaining to the taxed amount of retained income respectively, with a written statement attached thereto regarding the taxed amount of retained income or individually taxed amount of retained income and any other matters specified by Order of the Ministry of Finance, and filed a tax return, etc. for the business year for which the domestic corporation seeks the application of the provisions of Article 2, paragraph (3) of the Act, with an application made therein to seek the inclusion in deductible expenses of the amount to be included in the amount of deductible expenses pursuant to the provisions of Article 2, paragraph (3) of the Act and a written statement attached thereto regarding the calculation of the amount to be included in the amount of deductible expenses. In this case, the amount to be included in the amount of deductible expenses pursuant to the provisions of Article 2, paragraph (3) of the Act is limited to the amount to be included in the amount of deductible expenses based on the application.
- (6) Even where a domestic corporation has filed a tax return, etc. or a consolidated tax return prescribed in paragraph (1) without the application or written statement attached thereto as set forth in the preceding paragraph regarding the whole or part of the necessary matters including [1] the amount to be included in the amount of deductible expenses pursuant to the paragraph, [2] the taxed amount of retained income or individually taxed amount of retained income and [3] any other matters specified by Order of the Ministry of Finance, the district director may, when the find any unavoidable reason for the domestic corporation's failure to make a necessary application or attach a necessary written statement as set forth in the paragraph, apply the provisions of paragraph (1) to any amount for which the application or written statement has not been made or attached, only if such application and written statement are submitted.
- (7) With regard to the application of the provisions of Article 67, paragraph (3) and paragraph (5) of the Corporation Tax Act, any amount included, pursuant to the provisions of paragraph (1), in the amount of deductible expenses of a domestic corporation subject to the provisions of the paragraph is to be included in the amount of income, etc. prescribed in these provisions, and any necessary matters concerning the calculation of the amount of revenue reserves are specified by Cabinet Order.

Article 66-9 Matters concerning the determination as to whether or not a domestic corporation falls under any of the categories of corporation listed in

the items of Article 66-6, paragraph (1), the treatment of the part of the amount of creditable foreign corporation tax that is deemed to have been paid by a domestic corporation pursuant to the provisions of Article 66-7, paragraph (1), which pertains to the taxed amount of retained income included in the amount of deductible expenses in the calculation of the amount of income for each business year pursuant to the provisions of paragraph (1) of the preceding Article, and other necessary matters concerning the application of the provisions of the preceding three Articles are specified by Cabinet Order.

**Subsection 3 Special Provisions on Taxation of the Income of the Specified Foreign Corporations of a Domestic Corporation That Is a Specially-Related Shareholder**

(Inclusion in Gross Profits of Retained Income of Specified Foreign Corporations of Domestic Corporations That Are Specially-Related Shareholders)

Article 66-9-6 (1) Where, between a specially-related shareholder, etc. (meaning a person who falls under the category of a specified shareholder, etc. as well as an individual and a corporation with a special relationship thereto as specified by Cabinet Order; hereinafter the same applies in this Subsection) and a specially-related domestic corporation, there is a relationship specified by Cabinet Order as a relationship whereby the specially-related shareholder, etc. indirectly holds shares, etc. (meaning shares or capital contributions; hereinafter the same applies in this paragraph and the following paragraph) that account for 80 percent or more of the total number or total amount of issued shares of or capital contributions to the specially-related domestic corporation (excluding the shares or capital contributions held by the corporation; hereinafter referred to in this paragraph and the following paragraph as "issued shares, etc.") (such relationship referred to in the following paragraph as a "specified relationship"), and a foreign corporation specified by Cabinet Order as acting as an intermediary between the specially-related shareholder, etc. and the specially-related domestic corporation by way of the holding of the issued shares, etc. (hereinafter referred to in this Subsection as an "affiliated foreign corporation"), which falls under the category of affiliated foreign corporation specified by Cabinet Order as a corporation whose tax burden to be imposed on its income earned in a state or territory where its head office or principal office is located is significantly lower than the tax burden to be imposed on the income of a corporation in Japan (hereinafter referred to in this Subsection as a "specified foreign corporation"), in each business year beginning on or after October 1, 2007, retains as part of the amount of undistributed income, pursuant to the

provisions of Cabinet Order, any amount that is adjusted, with respect to the amount of undistributed income, based on the tax amount pertaining to the amount of undistributed income and the amount of dividend of surplus, dividend of profit or distribution of surplus prescribed in Article 23, paragraph (1), item (i) of the Corporation Tax Act (hereinafter referred to in this paragraph as "dividend of surplus, etc.") (such adjusted amount hereinafter referred to in this Article as "eligible retained income"), the amount equivalent to the part of eligible retained income which is calculated pursuant to the method specified by Cabinet Order as the amount of income corresponding to the number of shares, etc. of the specified foreign corporation held by the domestic corporation that is the specially-related shareholder, etc. through direct and/or indirect ownership, while taking into consideration the contents of the claim (meaning a claim to demand dividend of surplus, etc., distribution of property and any other economic benefit) vested in such shares, etc. (such part of eligible retained income hereinafter referred to in this Subsection as "taxable retained income") is deemed to be the amount of profit of the domestic corporation that is the specially-related shareholder, etc., and included in its gross profits in the calculation of the amount of its income for the business year that includes the day on which two months have elapsed since the day following the last day of the relevant business year.

- (2) In this Subsection, the meanings of the terms listed in the following items are as prescribed respectively in those items:
- (i) specified shareholder, etc.: An individual and corporation holding, at the time immediately before a specified relationship is established, shares, etc. of a specified domestic corporation (meaning a domestic corporation wherein not more than five shareholders, etc. (meaning shareholders, etc. prescribed in Article 2, item (xiv) of the Corporation Tax Act) as well as individuals and corporations with a special relationship thereto as specified by Cabinet Order hold shares, etc. that account for 80 percent or more of the total number or total amount of its issued shares, etc. at that time; the same applies in the following item);
  - (ii) specially-related domestic corporation: A specified domestic corporation, or a domestic corporation specified by Cabinet Order as a corporation that has received the transfer of the majority of assets and liabilities from a specified domestic corporation;
  - (iii) amount of undistributed income: An amount adjusted, with respect to the amount of income of a specified foreign corporation in its settlement of accounts for each business year, pursuant to the method specified by Cabinet Order, based on the amount calculated in accordance with the standards specified by Cabinet Order in a manner equivalent to the manner for calculating the amount of income for each business year pursuant to the



- Corporation Tax Act and this Act, in terms of the amount of loss incurred in each of the business years that commenced within seven years before the first day of the relevant business year; and
- (iv) number of shares, etc. held through direct and/or indirect ownership: The sum of the number of shares of or amount of capital contributions to a foreign corporation held directly by a resident prescribed in Article 2, paragraph (1), item (i)-2 or domestic corporation and the number of shares of or amount of capital contributions to the foreign corporation specified by Cabinet Order as being held indirectly by the individual or domestic corporation via another foreign corporation.
- (3) With regard to the application of the provisions of paragraph (1) in the case where a specified foreign corporation of a domestic corporation that is a specially-related shareholder, etc. (excluding a corporation engaged in, as its principal business, the holding of shares (including capital contributions) or bonds, the provision of industrial property rights or any other rights concerning technology, production methods involving special technology or any other equivalent rights or methods (including the right to use these rights) or copyrights (including rights of publication, neighboring rights and any other equivalent rights) or the lending of vessels or aircrafts) has an office, store, factory or any other fixed facility that is considered to be necessary for conducting its principal business in the state or territory where its head office or principal office is located, and takes charge of managing, controlling and operating the business by itself (referred to as the "case where a specified foreign corporation has a fixed facility" in the following paragraph), the phrase "amount that is adjusted" in the paragraph is deemed to be replaced with "amount that is adjusted,..., after deducting therefrom the amount equivalent to ten percent of the amount of expense specified by Cabinet Order as a personnel expense for people engaged in the business at the specified foreign corporation."
- (4) Where a specified foreign corporation prescribed in the preceding paragraph that is the specified foreign corporation of a domestic corporation that is a specially-related shareholder, etc. has a fixed facility in the state or territory where its head office or principal office is located, and falls under any of the cases listed in the following items depending on the type of business listed in the following items to which its principal business corresponds in each business year, the provisions of paragraph (1) and the preceding paragraph do not apply to the eligible retained income of the specified foreign corporation for the relevant business year:
- (i) wholesale business, banking business, trust business, financial instruments business, insurance business, water transportation business or air transportation business: The case specified by Cabinet Order in which the

specified foreign corporation conducts business mainly with a person other than [1] a specially-related domestic corporation of the specified foreign corporation, [2] a specially-related shareholder, etc. or [3] any other person specified by Cabinet Order as being equivalent to the persons mentioned in [1] or [2]; or

- (ii) business other than those listed in the preceding item: The case specified by Cabinet Order in which the specified foreign corporation conducts business mainly in the state or territory where its head office or principal office is located (including the water areas belonging to the state or territory which are specified by Cabinet Order prescribed in Article 66-6, paragraph (4), item (ii)).
- (5) A domestic corporation that is a specially-related shareholder, etc. must attach a balance sheet and profit and loss statement for each business year regarding the specified foreign corporation of the domestic corporation as well as any other documents specified by Order of the Ministry of Finance, to its tax return (meaning a tax return prescribed in Article 2, item (xxxi) of the Corporation Tax Act; the same applies in the following paragraph) for the business year that includes the day on which two months have elapsed since the day following the last day of the relevant business year.
- (6) The provisions of paragraph (3) and paragraph (4) apply only where the domestic corporation has attached, to its tax return, a document stating that these provisions apply, and preserved documents or any other materials that certify that these provisions apply.
- (7) The provisions of paragraph (1) do not apply where an affiliated foreign corporation of a domestic corporation that is a specially-related shareholder, etc. falls under the category of foreign affiliate prescribed in Article 66-6, paragraph (2), item (i) and the domestic corporation that is a specially-related shareholder, etc. falls under the category of domestic corporation listed in each item of Article 66-6, paragraph (1).
- (8) Where a domestic corporation that is a specially-related shareholder, etc. holds, directly or indirectly, a beneficial right of a foreign trust (meaning a foreign investment trust prescribed in Article 2, paragraph (22) of the Act on Investment Trusts and Investment Corporations, which is similar to a specified investment trust prescribed in Article 68-3-3, paragraph (1); hereinafter the same applies in this paragraph), the trustee of the foreign trust is deemed to be a different person for each of the trust assets, etc. under the foreign trust (meaning assets and liabilities included in the trust property and profits and expenses attributed to the trust property; hereinafter the same applies in this paragraph) and the trustee's own assets, etc. (meaning the trustee's assets and liabilities as well as profits and expenses other than those included in the trust assets, etc. under the foreign trust)), and the provisions of this Article

(excluding paragraph (3), paragraph (4) and paragraph (6)) through Article 66-9-9 are applied thereto.

- (9) The provisions of Article 4-6, paragraph (2) and Article 4-7 of the Corporation Tax Act apply mutatis mutandis in the case where the provisions of the preceding paragraph apply.

Article 66-9-7 (1) Where a domestic corporation that is a specially-related shareholder, etc. is subject to the provisions of paragraph (1) of the preceding Article, any part of the amount of foreign corporation tax (meaning foreign corporation tax prescribed in Article 69, paragraph (1) of the Corporation Tax Act; the same applies in the following paragraph) to be imposed on the income of a specified foreign corporation of the domestic corporation, which is calculated pursuant to the method specified by Cabinet Order as corresponding to the taxable retained income of the specified foreign corporation (up to the amount equivalent to the taxable retained income), pursuant to the provisions of Cabinet Order, be deemed to be the amount of creditable foreign corporation tax (meaning the amount of creditable corporation tax prescribed in Article 69, paragraph (1) of the Act; hereinafter the same applies in this Subsection) paid by the domestic corporation, and the provisions of Article 69, paragraphs (1) through (7), paragraph (10) and paragraphs (15) through (18) are applied thereto. In this case, in paragraph (10) of the Article, the phrase "any part of the amount..., which is deemed to be payable by the domestic corporation pursuant to the provisions of paragraph (8)" is deemed to be replaced with "any part of the amount..., which is deemed to be payable by the domestic corporation pursuant to the provisions of paragraph (8) and any part of the amount of foreign corporation tax to be imposed on the income of a specified foreign corporation prescribed in Article 66-9-7, paragraph (1) of the Act on Special Measures Concerning Taxation (Credit for Foreign Tax on Taxable Retained Income of Specified Foreign Corporations), which is deemed to be payable by the domestic corporation pursuant to the provisions of Article 66-9-7, paragraph (1) of the Act", the phrase "any part of the amount..., which is deemed to be payable by the domestic corporation pursuant to the provisions of paragraph (8) of the Article" is deemed to be replaced with "any part of the amount..., which is deemed to be payable by the domestic corporation pursuant to the provisions of paragraph (8) and any part of the amount of foreign corporation tax to be imposed on the income of a specified foreign corporation prescribed in Article 68-93-7, paragraph (1) of the Act (Credit for Foreign Tax on Individually Taxable Retained Income of Specified Foreign Corporations), which is deemed to be payable by the domestic corporation pursuant to the provisions of Article 68-93-7, paragraph (1) of the Act", and the phrase "paragraphs (1) through (3) of the Article" is deemed to be replaced with

"Article 81-15, paragraphs (1) through (3)."

- (2) Where a domestic corporation that is a specially-related shareholder, etc. is, in each consolidated business year, subject to the provisions of paragraph (1) of Article 68-93-6 with respect to the amount equivalent to the individually taxable retained income prescribed in the paragraph of a specified foreign corporation prescribed in the paragraph that is the specified foreign corporation of the domestic corporation, if foreign corporation tax is imposed on the income of the specified foreign corporation during the period of each business year beginning after the last day of the consolidated business year during which the domestic corporation has been subject to the provisions, the individually taxable retained income of the specified foreign corporation is deemed to be the taxable retained income of a specified foreign corporation prescribed in the preceding paragraph, and the amount of the foreign corporation tax to be imposed on the income of a specified foreign corporation prescribed in paragraph (1) of the Article is deemed to be the amount of foreign corporation tax to be imposed on the income of a specified foreign corporation prescribed in the preceding paragraph respectively, and the provisions of the paragraph are applied thereto.
- (3) Where a domestic corporation that is a specially-related shareholder, etc. is subject to the provisions of paragraph (1) of the preceding Article with respect to the amount equivalent to the taxable retained income of a specified foreign corporation that is subject to the provisions of the paragraph, and the domestic corporation is also subject to the provisions of Article 69, paragraphs (1) through (3) of the Corporation Tax Act pursuant to the provisions of paragraph (1), the amount that is deemed to be the amount of creditable foreign corporation tax pursuant to the provisions of paragraph (1) is included in the amount of gross profits in the calculation of the amount of income of the domestic corporation for the business year specified by Cabinet Order.

Article 66-9-8 (1) Where an event listed in item (i) or item (ii) has occurred with regard to a specified foreign corporation of a domestic corporation that has been subject to the provisions of Article 66-9-6, paragraph (1), or where an event listed in item (iii) has occurred with regard to an affiliated foreign corporation (limited to an affiliated foreign corporation that has received, from the specified foreign corporation, payment of dividend of surplus, dividend of profit or distribution of surplus prescribed in Article 23, paragraph (1), item (i) of the Corporation Tax Act (hereinafter referred to in this paragraph as "dividend of surplus, etc.") (such payment includes the delivery listed in item (ii) of the amount specified in the item), which is specified by Cabinet Order; hereinafter the same applies in this paragraph) of the domestic corporation, if the taxable retained income of the specified foreign corporation in each

business year of the domestic corporation that commenced within ten years before the first day of the business year that includes the day on which the relevant event has occurred (hereinafter referred to in this Article as "each business year within the preceding ten years"), contains any amount included in the amount of gross profits in the calculation of the amount of the domestic corporation's income for each business year within the preceding ten years pursuant to the provisions of Article 66-9-6, paragraph (1) (excluding any amount included in the amount of deductible expenses for each business year within the preceding ten years pursuant to the provisions of this paragraph; hereinafter referred to in this Article and the following Article as "taxed amount of retained income"), such taxed amount of retained income is included in the amount of deductible expenses in the calculation of the amount of the domestic corporation's income for the business year that includes the day on which the relevant event has occurred, up to the amount equivalent to the amount calculated pursuant to the method specified by Cabinet Order as part of the amount specified by each of the following items for the type of event corresponding to the event that has occurred with regard to the specified foreign corporation or the foreign affiliated corporation, which is appropriated from the taxable retained income pertaining to the domestic corporation:

- (i) payment of dividend of surplus, etc.: The amount of dividend of surplus, etc. to be paid;
  - (ii) delivery of money or any other assets by reason of the occurrence of any of the events listed in the items of Article 24, paragraph (1) of the Corporation Tax Act: The amount equivalent to the amount of revenue reserves which is to be decreased due to the delivery; or
  - (iii) payment of dividend of surplus, etc. to the domestic corporation or delivery of money or any other assets to the to the domestic corporation by reason of the occurrence of any of the events listed in the items of Article 24, paragraph (1) of the Corporation Tax Act: The amount equivalent to the amount of revenue reserves which is to be decreased due to the amount of dividend of surplus, etc. to be paid or the delivery.
- (2) Where a domestic corporation that is a specially-related shareholder, etc. has a consolidated business year that commenced within ten years before the first day of the business year that includes the day on which the event listed in any item of the preceding paragraph has occurred, and has an individually taxed amount of retained income (meaning the individually taxed amount of retained income prescribed in Article 68-93-8, paragraph (1); hereinafter the same applies in this paragraph) for the consolidated business year, with regard to the application of the provisions of the preceding paragraph, such individually taxed amount of retained income is deemed to be a taxed amount of retained income for each business year within the preceding ten years which

corresponds to the period of the consolidated business year.

(3) The provisions of Article 66-8, paragraphs (3) through (6) apply mutatis mutandis in the case where the provisions of paragraph (1) apply. In this case, each term or phrase listed in the middle column of the table below that appears in the provisions listed in the left column of the same table is deemed to be replaced with the corresponding term or phrase listed in the right column of the same table.

Article 66-8, paragraph (3)	domestic corporation has acquired, as a result of a qualified merger	domestic corporation that is the specially-related shareholder, etc. prescribed in Article 66-9-6, paragraph (1) (hereinafter referred to in this paragraph as a "specially-related shareholder, etc.") of a specially-related domestic corporation prescribed in Article 66-9-6, paragraph (2), item (ii) (hereinafter referred to in this paragraph as a "specially-related domestic corporation") has acquired, as a result of a qualified merger
	by the merged corporation...or the corporation effecting a post-formation acquisition of assets and/or liabilities	by the merged corporation...or the corporation effecting a post-formation acquisition of assets and/or liabilities that is the specially-related shareholder, etc. of specially-related domestic corporation
	of a specified foreign subsidiary, etc. held through direct and/or indirect ownership prescribed in Article 66-6, paragraph (2), item (iii)	of a specified foreign corporation prescribed in paragraph (1) of Article (hereinafter referred to in this paragraph as a "specified foreign corporation") held through direct and/or indirect ownership prescribed in paragraph (2), item (iv) of said Article
	of paragraph (1)	of Article 66-9-8, paragraph (1)
	deemed to be the taxed amount of retained income	deemed to be the taxed amount of retained income (meaning the taxed amount of retained income prescribed in the paragraph [Article 66-9-8, paragraph (1)]; hereinafter the same applies through to paragraph (6))

Article 66-8, paragraph (3), item (i)	individually taxed amount of retained income	individually taxed amount of retained income (meaning the individually taxed amount of retained income prescribed in Article 68-93-8, paragraph (1); hereinafter the same applies through to paragraph (6))
Article 66-8, paragraph (3), item (ii) and item (iii)	specified foreign subsidiary, etc.	specified foreign corporation
	Article 66-6, paragraph (1)	Article 66-9-6, paragraph (1)
Article 66-8, paragraph (4)	preceding paragraph or Article 68-92, paragraph (3)	preceding paragraph as applied mutatis mutandis pursuant to Article 66-9-8, paragraph (3), or Article 68-92, paragraph (3) as applied mutatis mutandis pursuant to Article 68-93-8, paragraph (3)
	of paragraph (1)	of Article 66-9-8, paragraph (1)
	of preceding paragraph	of preceding paragraph as applied mutatis mutandis pursuant to paragraph (3) of the Article
	paragraph (3) of the Article	Article 68-92, paragraph (3) as applied mutatis mutandis pursuant to Article 68-93-8, paragraph (3)
	paragraph (1) of the Article	Article 68-93-8, paragraph (1)
Article 66-8, paragraph (5)	paragraph (1)	Article 66-9-8, paragraph (1)
Article 66-8, paragraph (6)	paragraph (1)	Article 66-9-8, paragraph (1)
	preceding paragraph	preceding paragraph as applied mutatis mutandis pursuant to paragraph (3) of the Article

(4) The provisions of Article 66-8, paragraph (7) apply mutatis mutandis to the amount included, pursuant to the provisions of paragraph (1), in the amount of deductible expenses of a domestic corporation that is a specially-related shareholder, etc. subject to the provisions of the paragraph.

Article 66-9-9 Matters concerning the determination as to whether or not there is a specified relationship prescribed in Article 66-9-6, paragraph (1) between a specially-related shareholder, etc. and a specially-related domestic corporation, the treatment of the part of the amount of creditable foreign corporation tax that is deemed to have been paid by a domestic corporation that is a specially-

related shareholder, etc. pursuant to the provisions of Article 66-9-7, paragraph (1), which pertains to the taxed amount of retained income included in the amount of deductible expenses in the calculation of the amount of income for each business year pursuant to the provisions of paragraph (1) of the preceding Article, and other necessary matters concerning the application of the provisions of the preceding three Articles are specified by Cabinet Order.

### **Section 8 Other Special Provisions**

(Tax Exemption on Interest from Deposits Managed in a Special International Financial Transactions Account)

Article 67-11 (1) Where, on or after April 1, 1998, a foreign corporation listed in Article 141, item (i) of the Corporation Tax Act, which has been certified, pursuant to the provisions of Order of the Ministry of Finance, as falling under the category of nonresident prescribed in paragraph (3) of Article 21 of the Foreign Exchange and Foreign Trade Act, has made deposits or provided loans to a financial institution prescribed in the paragraph, corporation tax is not imposed on any interest paid to the foreign corporation from deposits or loans that are managed in a special international financial transactions account prescribed in the paragraph (referred to in the following paragraph as a "special international financial transactions account"); provided, however, that this does not apply to any interest which is attributed to business conducted by the foreign corporation in Japan or which is otherwise specified by Cabinet Order.

(2) In the case referred to in the preceding paragraph, where any event has occurred that is in violation of the provisions of Cabinet Order established pursuant to the provisions of Article 21, paragraph (4) of the Foreign Exchange and Foreign Trade Act, which pertains to the matters concerning the management of a special international financial transactions account, the provisions of the main clause of the preceding Article do not apply to any interest pertaining to the accounting period that includes the day on which such event has occurred.

(Tax Exemption on Interest from Book-Entry Government Bonds)

Article 67-16 (1) Corporation tax is not imposed with respect to any interest to be received by a foreign corporation listed in Article 141, item (i) of the Corporation Tax Act on book-entry government bonds or book-entry municipal bonds, both of which are prescribed in Article 5-2, paragraph (1); provided, however, that this does not apply to such interest which is attributed to a business conducted by the foreign corporation in Japan at any place prescribed in Article 141, item (i) of the Act.



- (2) Corporation tax is not imposed with respect to any interest on foreign private bonds or any discount on foreign private bonds (meaning a margin generated where the amount to be received due to the redemption of foreign private bonds exceeds the issue price of the foreign private bonds) to be received by a foreign corporation with regard to foreign private bonds prescribed in Article 6, paragraph (1) issued during the period from April 1, 1998, to March 31, 2010 (excluding those issued by a foreign corporation, which is specified by Cabinet Order as prescribed in paragraph (4) of the Article, as a foreign corporation whose tax burden to be imposed on its income earned in a state or territory where its head office or principal office is located is significantly lower than the tax burden to be imposed on the income of a corporation in Japan); provided, however, that this does not apply to such interest or discount on foreign private bonds to be received by a foreign corporation with a permanent establishment in Japan prescribed in Article 2, paragraph (1), item (iv) (hereinafter referred to in this Article and the following Article as a "foreign corporation with a permanent establishment in Japan"), which is attributed to a business conducted in Japan by the foreign corporation with a permanent establishment in Japan or which is otherwise specified by Cabinet Order.
- (3) Corporation tax is not imposed with respect to any profit from redemption prescribed in Article 41-12, paragraph (7) (referred to in the following paragraph as "profit from redemption") to be received by a foreign corporation with regard to specified short-term government or company bonds prescribed in Article 41-12, paragraph (9) which are listed in Article 41-12, paragraph (9), items (i) through (viii) (referred to in the following paragraph as "specified short-term government bonds"); provided, however, that this does not apply to such profit from redemption to be received by a foreign corporation with a permanent establishment in Japan, which is attributed to a business conducted in Japan by the foreign corporation with a permanent establishment in Japan or which is otherwise specified by Cabinet Order.
- (4) With respect to profit from redemption of specified short-term government bonds to be received by a foreign corporation, which is the trustee of a foreign investment trust prescribed in Article 5-2, paragraph (2), for the trust property under the foreign investment trust, the provisions of the preceding paragraph apply only where the foreign investment trust is a qualified foreign securities investment trust prescribed in Article 5-2, paragraph (2).
- (5) Corporation tax is not imposed with respect to specified interest prescribed in Article 42-2, paragraph (1) (limited to interest on which income tax is not imposed pursuant to the provisions of Article 42-2, paragraph (1)) which is received by a foreign corporation listed in Article 141, item (i) of the Corporation Tax Act that falls under the category of financial institution, etc. prescribed in Article 42-2, paragraph (1), from a specified financial institution,

etc. prescribed in Article 42-2, paragraph (1) in a bond transaction with a repurchase/resale agreement commenced on or after April 1, 2002; provided, however, that this does not apply to such specified interest which is attributed to a business conducted by the foreign corporation in Japan at any place prescribed in Article 141, item (i) of the Act or which is otherwise specified by Cabinet Order.

(Special Provisions on Book-Entry Government Bonds in Separate Trading)

Article 67-17 (1) Where a foreign corporation has any income from the holding or transfer of book-entry government bonds in separate trading (meaning principal-only book-entry government bonds prescribed in Article 90, paragraph (2) of the Act on the Book-Entry Transfer of Company Bonds, Shares, etc. and coupon-only book-entry government bonds prescribed in paragraph (3) of the Article for which separate trading of principal and interest prescribed in paragraph (1) of the Article has been conducted pursuant to the provisions of Order of the Ministry of Finance; hereinafter the same applies in this Article), for which the foreign corporation has made entries or records under the book-entry transfer system prescribed in Article 5-2, paragraph (5), item (vi) (hereinafter referred to in this Article as "entries or records under the book-entry transfer system") in its account established with a specified book-entry transfer institution, etc. prescribed in Article 5-2, paragraph (1) (hereinafter referred to in this Article as a "specified book-entry transfer institution, etc.") or a qualified foreign intermediary prescribed in Article 5-2, paragraph (5), item (iv) (hereinafter referred to in this Article as a "qualified foreign intermediary"), via a business office or any other office of the specified book-entry transfer institution, etc. located in Japan (including a post office; hereinafter referred to in this Article as a "business office, etc.") or a specified overseas business office, etc. prescribed in Article 5-2, paragraph (5), item (v) of the qualified foreign intermediary, corporation tax is not imposed with respect to such interest from the holding or transfer of the book-entry government bonds in separate trading.

(2) With regard to the application of the provisions of the Corporation Tax Act, it is deemed that there is no amount of loss or amount specified by Cabinet Order that is incurred by a foreign corporation from the holding or transfer of book-entry government bonds in separate trading for which the foreign corporation has made entries or records under the book-entry transfer system in its account established with a specified book-entry transfer institution, etc. or qualified foreign intermediary via a business office, etc. of the specified book-entry transfer institution, etc. located in Japan or a specified overseas business office, etc. of the qualified foreign intermediary (such amount hereinafter referred to in this Article as "amount of loss").

- (3) The provisions of the preceding two paragraphs does not apply to any income earned and amount of loss incurred by a foreign corporation with a permanent establishment in Japan from the holding or transfer of book-entry government bonds in separate trading, which are attributed to a business conducted by the foreign corporation in Japan.
- (4) With respect to any income earned and amount of loss incurred by a foreign corporation, which is the trustee of a foreign investment trust prescribed in Article 5-2, paragraph (2), from the holding or transfer of book-entry government bonds in separate trading that are included in the trust property under the foreign investment trust, the provisions of paragraph (1) and paragraph (2) apply only where the foreign investment trust is a qualified foreign securities investment trust prescribed in Article 5-2, paragraph (2).

(Special Provisions Concerning the Scope of Qualified Merger)

Article 68-2-3 (1) Where a merger implemented by a domestic corporation falls under the category of specified intra-group merger (meaning a merger which falls under all of the following items; excluding a merger which satisfies the requirement that any of the major businesses conducted by the merged corporation before the merger is interrelated with any of the businesses conducted by the merging corporation before the merger, and any other requirements specified by Cabinet Order), with regard to the application of the provisions of the Corporation Tax Act and any other laws and regulations, the term "merger" in Article 2, item (xii)-8, (a) through (c) of the Corporation Tax Act is deemed to be replaced with "merger (excluding a merger that falls under the category of specified intra-group merger prescribed in Article 68-2-3, paragraph (1) of the Act on Special Measures Concerning Taxation (Special Provisions Concerning the Scope of Qualified Merger))":

- (i) where there is a specified controlling interest between the merged corporation and the merging corporation; and
- (ii) where a shareholder, etc. (meaning a shareholder, etc. prescribed in Article 2, item (xiv) of the Corporation Tax Act; the same applies in the following paragraph and paragraph (2) of the following Article) of the merged corporation is provided with shares of the merging parent corporation prescribed in Article 2, item (xii)-8 of the Act (limited to shares (including capital contributions; hereinafter the same applies in this Article) of a foreign corporation that falls under the category of specified foreign corporation with less tax burden).
- (2) Where a company split implemented by a domestic corporation falls under the category of specified intra-group company split (meaning a company split which falls under all of the following items; excluding a company split which satisfies the requirement that any of the businesses conducted by the splitting

corporation before the split, which is to be conducted by the succeeding corporation in a company split as a result of the split, is interrelated with any of the businesses conducted by the succeeding corporation in a company split before the split, and any other requirements specified by Cabinet Order), with regard to the application of the provisions of the Corporation Tax Act and any other laws and regulations, the term "company split" in Article 2, item (xii)-11, (a) through (c) of the Corporation Tax Act is deemed to be replaced with "company split (excluding a company split that falls under the category of specified intra-group company split prescribed in Article 68-2-3, paragraph (2) of the Act on Special Measures Concerning Taxation (Special Provisions Concerning the Scope of Qualified Merger, etc.))":

(i) where the split is a split specified by Cabinet Order as a split in which the majority of the assets and liabilities of the splitting corporation are transferred to the succeeding corporation in a company split;

(ii) where there is a specified controlling interest between the split corporation and the succeeding corporation in a company split; and

(iii) where a shareholder, etc. of the splitting corporation or the splitting corporation is provided with shares of the succeeding parent corporation in a company split prescribed in Article 2, item (xii)-11 of the Corporation Tax Act (limited to shares of a foreign corporation that falls under the category of specified foreign corporation with less tax burden).

(3) Where a share exchange implemented by a domestic corporation falls under the category of specified intra-group share exchange (meaning a share exchange which falls under all of the following items; excluding a share exchange which satisfies the requirement that any of the major businesses conducted by the wholly owned subsidiary corporation in a share exchange before the share exchange is interrelated with any of the businesses conducted by the wholly owning parent corporation in a share exchange before the share exchange, and any other requirements specified by Cabinet Order), with regard to the application of the provisions of the Corporation Tax Act and any other laws and regulations, the term "share exchange" in Article 2, item (xii)-16, (a) through (c) of the Corporation Tax Act is deemed to be replaced with "share exchange (excluding a share exchange that falls under the category of specified intra-group share exchange prescribed in Article 68-2-3, paragraph (3) of the Act on Special Measures Concerning Taxation (Special Provisions Concerning the Scope of Qualified Merger))":

(i) where there is a specified controlling interest between the wholly owned subsidiary corporation in a share exchange and the wholly owning parent corporation in a share exchange; and

(ii) where a shareholder, etc. of the wholly owned subsidiary corporation in a share exchange is provided with shares of the fully controlling parent

- corporation in a share exchange prescribed in Article 2, item (xii)-16 of the Corporation Tax Act (limited to shares of a foreign corporation that falls under the category of specified foreign corporation with less tax burden).
- (4) Where a capital contribution in kind whereby a domestic corporation transfers its assets or liabilities to a foreign corporation falls under the category of specified capital contribution in kind (meaning a capital contribution in kind whereby a domestic corporation transfers shares of a specified foreign subsidiary corporation in its possession to a specified foreign parent corporation, etc. of the domestic corporation), with regard to the application of the provisions of the Corporation Tax Act and any other laws and regulations, the term "capital contribution in kind that falls under any of the following (limited to" in Article 2, item (xii)-14 of the Corporation Tax Act is deemed to be replaced with "capital contribution in kind that falls under any of the following (limited to a specified capital contribution in kind prescribed in Article 68-2-3, paragraph (4) of the Act on Special Measures Concerning Taxation (Special Provisions Concerning the Scope of Qualified Merger, etc.)".
- (5) In this Article, the meanings of the terms listed in the following items are as prescribed respectively in those items:
- (i) specified foreign corporation with less tax burden: A foreign corporation specified by Cabinet Order as a corporation whose tax burden to be imposed on its income earned in a state or territory where its head office or principal office is located is significantly lower than the tax burden to be imposed on the income of a corporation in Japan;
  - (ii) specified controlling interest: A relationship between two domestic corporations whereby either domestic corporation holds, directly or indirectly, shares that account for more than 50 percent of the total number or total amount of issued shares of or capital contributions to the other domestic corporation (excluding the shares or capital contributions held by the other corporation; hereinafter referred to in this paragraph as "issued shares, etc.") or any other special relationship specified by Cabinet Order;
  - (iii) specified foreign subsidiary corporation: A foreign corporation in which, at any time during the period from the first day of the earliest business year that commenced within two years before the first day of the business year of the foreign corporation that includes the date of the capital contribution in kind, until that date of the capital contribution in kind, residents (meaning residents prescribed in Article 2, paragraph (1), item (i)-2; hereinafter the same applies in this item), domestic corporations and specially-related nonresidents (meaning nonresidents prescribed in Article 2, paragraph (1), item (i)-2 with a special relationship specified by Cabinet Order to residents or domestic corporations) hold shares that account for more than 50 percent of the total number or total amount of shares, etc. of the foreign corporation,

and which falls under the category of specified foreign corporation with less tax burden; and

(iv) specified foreign parent corporation, etc.: A foreign corporation which has a relationship with a domestic corporation whereby the foreign corporation directly or indirectly holds shares that account for 80 percent or more of the total number or total amount of issued shares, etc. of the domestic corporation, and which falls under the category of specified foreign corporation with less tax burden

(6) Beyond what is specified in the preceding paragraphs, the necessary matters concerning the application of the provisions of the Corporation Tax Act and any other laws and regulations in the case where a specified intra-group merger prescribed in paragraph (1), specified intra-group company split prescribed in paragraph (2), specified intra-group share exchange prescribed in paragraph (3) or specified capital contribution in kind prescribed in paragraph (4) has been implemented, are specified by Cabinet Order.

(Special Provisions on Taxation of the Shareholders in the Event of a Specified Merger)

Article 68-3 (1) Where a corporation has, as a result of a merger (limited to a merger that does not fall under the category of qualified merger) of a domestic corporation to which the corporation issued old shares (meaning shares (including capital contributions; hereinafter the same applies in this Article) that were held by the corporation), been provided with shares of a foreign corporation which has a relationship with the merging corporation specified by Cabinet Order as a relationship whereby the foreign corporation holds the whole of the issued shares of or capital contributions to the merging corporation (excluding the shares held by the merging corporation; referred to in paragraph (3) as "issued shares, etc."), if the shares of the foreign corporation are shares of a specified foreign corporation with less tax burden (meaning a specified foreign corporation with less tax burden prescribed in paragraph (5), item (i) of the preceding Article; hereinafter the same applies in this Article), the provisions of Article 61-2, paragraph (2) of the Corporation Tax Act (including the case where it is applied mutatis mutandis to the calculation made pursuant to the provisions of Article 142 of the Act) do not apply.

(2) Where a corporation has, as a result of a specified company split by split-off implemented by a domestic corporation to which the corporation issued old shares (meaning shares that were held by the corporation) (such specified company split by split-off means a company split by split-off (meaning a split prescribed in paragraph (2), item (i) of the preceding Article, which does not fall under the category of qualified company split by split-off) whereby a

shareholder, etc. of the splitting corporation has not been provided with assets (excluding money and other assets provided for the shareholder, etc. as dividend of surplus, etc. prescribed in Article 61-2, paragraph (4) of the Corporation Tax Act, except for assets as a consideration for a split prescribed in Article 61-2, paragraph (4) of the Act) other than shares of a specified foreign parent corporation (meaning a parent corporation prescribed in Article 61-2, paragraph (4) of the Act which falls under the category of specified foreign corporation with less tax burden; hereinafter the same applies in this paragraph) of the succeeding corporation in the company split), been provided with shares of a specified foreign parent corporation of the succeeding corporation in the company split, with regard to the application of the provisions of Article 61-2, paragraph (4) of the Act (including the case where it is applied mutatis mutandis to the calculation made pursuant to the provisions of Article 142 of the Act), the phrase "company split by split-off (wherein a shareholder, etc. of the splitting corporation has not been provided with...(hereinafter referred to as..." is deemed to be replaced with "company split by split-off (wherein a shareholder, etc. of the splitting corporation has not been provided with...(excluding a company split by split-off that falls under the category of specified company split by split-off prescribed in Article 68-3, paragraph (2) of the Act on Special Measures Concerning Taxation (Special Provisions on Taxation of the Shareholders, etc. in the Event of a Specified Merger); hereinafter referred to as..."

(3) Where a corporation has, as a result of a share exchange (limited to a share exchange that does not fall under the category of qualified share exchange) implemented by a domestic corporation to which the corporation issued old shares (meaning shares that were held by the corporation), been provided with shares of a foreign corporation which has a relationship with the wholly owning parent corporation in a share exchange specified by Cabinet Order as a relationship whereby the foreign corporation holds the whole of the issued shares, etc. of the wholly owning parent corporation in a share exchange, if the shares of the foreign corporation are shares of a specified foreign corporation with less tax burden, the provisions of Article 61-2, paragraph (9) of the Corporation Tax Act (including the case where it is applied mutatis mutandis to the calculation made pursuant to the provisions of Article 142 of the Act) do not apply.

(4) The acquisition cost for shares in the case where the provisions of the preceding three paragraphs apply, and other necessary matters concerning the application of the provisions of laws and regulations on corporation tax are specified by Cabinet Order.

(Special Provisions on Taxation of the Trust Corporation of a Special Purpose

Trusts)

Article 68-3-2 (1) Any amount specified by Cabinet Order as the amount of distribution of profit from a special purpose trust listed in Article 2, item (xxix)-2, (e) of the Corporation Tax Act (hereinafter referred to in this Article as a "special purpose trust") (such amount of distribution of profit hereinafter referred to in this Article as "amount of distribution of profit"), which pertains to the business year of the trust corporation (meaning a trust corporation prescribed in Article 4-7 of the Act (limited to a trust corporation that is deemed to be a domestic corporation pursuant to the provisions of Article 4-7, item (i) of the Act as applied mutatis mutandis pursuant to Article 2-2, paragraph (3) and therefore be subject to the provisions of this Act); the same applies in the following paragraph to paragraph (6)) for the special purpose trust, is included in the amount of deductible expenses in the calculation of the amount of [the trust corporation's] income for the business year, if the special purpose trust satisfies the requirements listed in item (i) and the business year satisfies the requirements listed in item (ii); provided, however, that where the amount of distribution of profit exceeds the amount specified by Cabinet Order as the amount of [the trust corporation's] income for the business year, the amount to be included in the amount of deductible expenses is limited to such amount specified by Cabinet Order:

(i) all of the following requirements:

(a) notification has been made with respect to the special purpose trust pursuant to the provisions of Article 225, paragraph (1) of the Act on Securitization of Assets;

(b) the special purpose trust conforms to any of the following conditions:

1. the public offering of beneficial rights of the special purpose trust by the issuer (meaning an issuer prescribed in Article 2, paragraph (5) of the Financial Instruments and Exchange Act; hereinafter the same applies in this item) has been conducted by way of a solicitation for acquisition prescribed in paragraph (3) of the Article (limited to one that falls under the case listed in item (i) of the paragraph), and the total issue price of the beneficial rights is not less than 100 million yen;
2. as a result of the public offering of beneficial rights of the special purpose trust conducted by the issuer, the beneficial rights have been accepted by not less than 50 persons; or
3. as a result of the public offering of beneficial rights of the special purpose trust conducted by the issuer, the beneficial rights have been accepted only by an institutional investors (meaning a financial instruments business operator prescribed in Article 2, paragraph (9) of the Financial Instruments and Exchange Act (limited to a person who conducts a business falling under the category of a securities-related



business prescribed in Article 28, paragraph (8) of the Act or an investment management business prescribed in paragraph (4) of the Article, out of type I financial instruments businesses prescribed in paragraph (1) of the Article) or others specified by Order of the Ministry of Finance);

- (c) the public offering of beneficial rights of the special purpose trust conducted by the issuer falls under the category of public offering of beneficial rights specified by Cabinet Order as one conducted mainly in Japan; and
  - (d) Any other requirement specified by Cabinet Order.
- (ii) all of the following requirements:
- (a) at the end of the business year, the trust corporation does not fall under the category of family corporations prescribed in Article 2, item (x) of the Corporation Tax Act;
  - (b) the amount of distribution of profit pertaining to the business year exceeds 90 percent of the amount specified by Cabinet Order as the amount of distributable income for the business year; and
  - (c) any other requirement specified by Cabinet Order.
- (2) With regard to the application of the provisions of Article 23, paragraph (1) of the Corporation Tax Act to the trust corporation for a special purpose trust, the phrase "received by a domestic corporation" in Article 23, paragraph (1) of the Act is deemed to be replaced with "received by a domestic corporation (excluding a trust corporation prescribed in Article 4-7 (Application of This Act to Trust Corporations, etc.) for the special purpose trust listed in Article 2, item (xxix)-2, (e) (Definitions))".
- (3) With regard to the application of the provisions of Article 69 of the Corporation Tax Act to the trust corporation for a special purpose trust, the phrase "In the case where a domestic corporation" in paragraph (1) of the Article is deemed to be replaced with "In the case where a domestic corporation (excluding a trust corporation prescribed in Article 4-7 (Application of This Act to Trust Corporations, etc.) for a special purpose trust listed in Article 2, item (xxix)-2, (e) (Definitions); hereinafter the same applies in this Article).".
- (4) The amount of foreign corporation tax prescribed in Article 69, paragraph (1) of the Corporation Tax Act that a trust corporation for a special purpose trust has paid is credited against the income tax, as specified by Cabinet Order, to the extent of the amount of income tax on the amount of distribution of profit from the special purpose trust.
- (5) Where a trust corporation for a special purpose trust subject to the provisions of the preceding paragraph is to pay any amount of distribution of profit to a resident or a nonresident prescribed in Article 2, paragraph (1), item (i)-2, a domestic corporation, or a foreign corporation, the amount of dividends, etc.

prescribed in Article 182, paragraph (ii) of the Income Tax Act, the amount of domestic source income prescribed in Article 213, paragraph (1), item (i) of the Act, or the amount of dividends, etc. prescribed in paragraph (2), item (ii) of the Article is to be the amount obtained by adding the amount to be credited pursuant to the provisions of the preceding paragraph to these amounts, notwithstanding these provisions.

- (6) With regard to the application of the provisions of Article 62-3, paragraph (3) to the trust corporation for a special purpose trust, the term "the transfer..., which is specified by Cabinet Order" in Article 62-3, paragraph (3) is deemed to be replaced with "the transfer..., which is specified by Cabinet Order, and the transfer conducted by a trust corporation prescribed in Article 68-3-2, paragraph (1) for a special purpose trust prescribed in Article 68-3-2, paragraph (1), which is conducted in the business year that satisfies the requirements listed in Article 68-3-2, paragraph (1), item (ii) (excluding (b))".
- (7) With regard to the application of the provisions of Article 23 and Article 93 of the Corporation Tax Act to the amount of distribution of profit from a special purpose trust to be received by a corporation, the phrase "amount listed in item (i)" in Article 23, paragraph (1) of Act is deemed to be replaced with "amount listed in item (i)... and the amount of distribution of profit prescribed in Article 68-3-2, paragraph (1) of the Act on Special Measures Concerning Taxation (Special Provisions on Taxation of the Trust Corporation of a Special Purpose Trust) from the special purpose trust listed in Article 2, item (xxix)-2, (e) (Definitions)", and the phrase "amount listed in item (iii) of the Article" in Article 93, paragraph (2), item (ii) of the Act is deemed to be replaced with "amount listed in item (iii) of the Article and the amount of distribution of profit prescribed in Article 68-3-2, paragraph (1) of the Act on Special Measures Concerning Taxation (Special Provisions on Taxation of the Trust Corporation of a Special Purpose Trust) from the special purpose trust listed in Article 2, item (xxix)-2, (e) (Definitions)".
- (8) The provisions of paragraph (1) apply only where the trust corporation for a special purpose trust has filed a tax return prescribed in Article 2, item (xxxi) of the Corporation Tax Act (referred to in the following paragraph as a "tax return") for the business year for which the trust corporation seeks the application of the provisions of the paragraph, with an application made therein to seek the inclusion in deductible expenses of the amount to be included in the amount of deductible expenses pursuant to the provisions of paragraph (1) and a written statement attached thereto regarding the calculation of the amount to be included in the amount of deductible expenses, and preserved the documents that certify that the requirements listed in items (i), (b) and (c) of the paragraph are satisfied.
- (9) Even where the trust corporation for a special purpose trust has filed a tax

return without the application or written statement set forth in the preceding paragraph attached thereto or failed to preserve the documents on the calculation set forth in the paragraph, the district director of the tax office may, when they find any unavoidable reason for the trust corporation's failure to make a necessary application, attach a necessary written statement or preserve the necessary documents on the calculation, apply the provisions of paragraph (1).

- (10) The provisions of paragraph (1), paragraph (2), paragraph (6) and the preceding two paragraphs apply *mutatis mutandis* where the trust corporation prescribed in Article 4-7 of the Corporation Tax Act for a special purpose trust (limited to a trust corporation that is deemed to be a foreign corporation pursuant to the provisions of Article 4-7, item (ii) of the Act as applied *mutatis mutandis* pursuant to Article 2-2, paragraph (3) and therefore be subject to the provisions of this Act, which falls under any of the categories of foreign corporation listed in Article 141, items (i) through (iii) of the Corporation Tax Act), pursuant to the provisions of Article 142 of the Act, calculates the amount of income categorized as domestic source income prescribed in Article 141 of the Act in accordance with the provisions of the Act. In this case, the phrase "Any amount ...from a special purpose trust..., which pertains to the business year" in paragraph (1) is deemed to be replaced with "Any amount ...from a special purpose trust..., which pertains to a business conducted in Japan and also pertains to the business year", and the phrase "Article 23, paragraph (1) of the Corporation Tax Act" is deemed to be replaced with "Article 23, paragraph (1) of the Corporation Tax Act applied in the case where, pursuant to the provisions of Article 142 of the Corporation Tax Act, calculation is made in accordance with the provisions of Article 23, paragraph (1) of the Act".
- (11) The amount of distribution of profit from a special purpose trust set forth in paragraph (1) as applied *mutatis mutandis* pursuant to the preceding paragraph, which is received by a domestic corporation (such amount hereinafter referred to in this paragraph and the following paragraph as "amount of distribution of profit from a foreign special purpose trust") is deemed to be excluded from the amount of dividend, etc. prescribed in Article 69, paragraph (8) of the Corporation Tax Act, and the amount of distribution of profit from a foreign special purpose trust to be received by a foreign subsidiary prescribed in Article 69, paragraph (8) of the Act is deemed to be excluded from the amount of dividend, etc. from a foreign second-tier subsidiary prescribed in Article 68, paragraph (11) of the Act.
- (12) The amount of distribution of profit from a special purpose trust to be received by a foreign corporation (limited to the amount to be received by a foreign corporation listed in Article 141, items (i) through (iii) of the Corporation Tax Act (the amount to be received by a foreign corporation listed

in item (ii) or item (iii) of the Article is limited to the amount to be attributed to the business prescribed in these provisions that is conducted by the foreign corporation)) is deemed to be the amount of dividend of surplus to be received from a domestic corporation prescribed in Article 138, item (v), (a) of the Act, and the provisions of the Act and any other provisions of laws and regulations concerning corporation tax (excluding the provisions of Article 23, paragraph (1) of the Corporation Tax Act applied in the case where, pursuant to the provisions of Article 142 of the Act, calculation is made in accordance with the provisions of Article 23, paragraph (1) of the Act) are applied thereto.

(13) Beyond what is specified in paragraph (8) and paragraph (9), the application of the provisions of paragraphs (1) through (7) and the preceding three paragraphs, and other necessary matters concerning the application of the provisions of laws and regulations concerning corporation tax on income for the relevant business year of a trust corporation prescribed in Article 4-7 of the Corporation Tax Act from a special purpose trust are specified by Cabinet Order.

(Special Provisions on Taxation of the Trust Corporation of a Special Investment Trust)

Article 68-3-3 (1) Any amount specified by Cabinet Order as the amount of distribution of profit from a special investment trust (meaning an investment trust listed in Article 2, paragraph (3) of the Act on Investment Trusts and Investment Corporations (referred to in item (i) as the "Investment Trust Act", which falls under the category of trust subject to corporation taxation; hereinafter the same applies in this Article) (such amount of distribution of profit hereinafter referred to in this Article as "amount of distribution of profit"), which pertains to the business year of the trust corporation (meaning a trust corporation prescribed in Article 4-7 of the Corporation Tax Act (limited to a trust corporation that is deemed to be a domestic corporation pursuant to the provisions of Article 4-7, item (i) of the Act as applied mutatis mutandis pursuant to Article 2-2, paragraph (3) and therefore be subject to the provisions of this Act); the same applies in the following paragraph to paragraph (6)) for the special investment trust, is included in the amount of deductible expenses in the calculation of the amount of [the trust corporation's] income for the business year, if the special investment trust satisfies the requirements listed in item (i) and the business year satisfies the requirements listed in item (ii); provided, however, that where the amount of distribution of profit exceeds the amount specified by Cabinet Order as the amount of [the trust corporation's] income for the business year, the amount to be included in the amount of deductible expenses is to be limited to such amount specified by Cabinet Order:

- (i) all of the following requirements:
  - (a) notification has been made with respect to the special investment trust pursuant to the provisions of Article 4, paragraph (1) or Article 49, paragraph (1) of the Investment Trust Act;
  - (b) the public offering of beneficial rights of the special investment trust conducted by the trustee (or the settlor for an investment trust operated with instruction from the settlor prescribed in Article 2, paragraph (1) of the Investment Trust Act; the same applies in (c)) conducted by way of private placement by an institutional investment (meaning private placement by a qualified institutional investment prescribed in Article 2, paragraph (9) of the Act only with a person specified by Order of the Ministry of Finance as the counterparty) and an investment trust contract (meaning a contract for an investment trust operated with instruction from the settlor prescribed in Article 4, paragraph (1) of the Investment Trust Act or a contract for an investment trust operated without instruction from the settlor prescribed in Article 49, paragraph (1) of the Investment Trust Act) contains the statement to that effect;
  - (c) the public offering of beneficial rights of the special investment trust conducted by the trustee falls under the category of public offering of beneficial rights specified by Cabinet Order as one conducted mainly in Japan; and.
  - (d) any other requirement specified by Cabinet Order.
- (ii) all of the following requirements:
  - (a) at the end of the business year, the trust corporation does not fall under the category of family corporations prescribed in Article 2, item (x) of the Corporation Tax Act;
  - (b) the ratio specified by Cabinet Order as the ratio of the amount of distribution of profit pertaining to the business year to the amount of distributable income exceeds 90 percent; and
  - (c) any other requirement specified by Cabinet Order.
- (2) With regard to the application of the provisions of Article 23, paragraph (1) of the Corporation Tax Act to the trust corporation for a special investment trust, the phrase "received by a domestic corporation" in Article 23, paragraph (1) of the Act is deemed to be replaced with "received by a domestic corporation (excluding a trust corporation prescribed in Article 4-7 (Application of This Act to Trust Corporations) for the special investment trust prescribed in Article 68-3-3, paragraph (1) of the Act on Special Measures Concerning Taxation (Special Provisions on Taxation of the Trust Corporation of a Special Investment Trust) (limited to a special investment trust that satisfies the requirements listed in Article 68-3-3, paragraph (1), item (i), (b) or (c)))".
- (3) With regard to the application of the provisions of Article 69 of the

Corporation Tax Act to the trust corporation for a special investment trust, the phrase "In the case where a domestic corporation" in paragraph (1) of the Article is deemed to be replaced with " In the case where a domestic corporation (excluding a trust corporation prescribed in Article 4-7 (Application of This Act to Trust Corporations,) for a special investment trust prescribed in Article 68-3-3, paragraph (1) (Special Provisions on Taxation of the Trust Corporation of a Special Investment Trust) of the Act on Special Measures Concerning Taxation; hereinafter the same applies in this Article)."

- (4) The amount of foreign corporation tax prescribed in Article 69, paragraph (1) of the Corporation Tax Act that a trust corporation for a special investment trust has paid is credited against the income tax, as specified by Cabinet Order, to the extent of the amount of income tax on the amount of distribution of profit from the special investment trust.
- (5) Where a trust corporation for a special investment trust subject to the provisions of the preceding paragraph is to pay any amount of distribution of profit to a resident or a nonresident prescribed in Article 2, paragraph (1), item (i)-2, a domestic corporation, or a foreign corporation, the amount of dividends, etc. prescribed in Article 182, item (ii) of the Income Tax Act, the amount of domestic source income prescribed in Article 213, paragraph (1), item (i) of the Act, or the amount of dividends, etc. prescribed in paragraph (2), item (ii) of the Article is to be the amount obtained by adding the amount to be credited pursuant to the provisions of the preceding paragraph to these amounts, notwithstanding these provisions.
- (6) With regard to the application of the provisions of Article 62-3, paragraph (3) to the trust corporation for a special investment trust, the term "the transfer..., which is specified by Cabinet Order" in Article 62-3, paragraph (3) is deemed to be replaced with "the transfer..., which is specified by Cabinet Order, and the transfer conducted by a trust corporation prescribed in Article 68-3-3, paragraph (1) for a special investment trust prescribed in Article 68-3-3, paragraph (1), which is conducted in the business year that satisfies the requirements listed in Article 68-3-3, paragraph (1), item (ii) (excluding (b))".
- (7) With regard to the application of the provisions of Article 23 and Article 93 of the Corporation Tax Act to the amount of distribution of profit from a special investment trust (limited to a special investment trust that satisfies the requirements listed in paragraph (1), item (i), (b) and (c)) to be received by a corporation, the phrase "amount listed in item (i)" in Article 23, paragraph (1) of the Act is deemed to be replaced with "amount listed in item (i)... and the amount of distribution of profit prescribed in Article 68-3-3, paragraph (1) of the Act on Special Measures Concerning Taxation (Special Provisions on Taxation of the Trust Corporation of a Special Investment Trust) from the special investment trust prescribed in paragraph (7) of the Article", and the

- phrase "amount listed in item (iii) of the Article" in Article 93, paragraph (2), item (ii) of the Act is deemed to be replaced with "amount listed in item (iii) of the Article and the amount of distribution of profit prescribed in Article 68-3-3, paragraph (1) of the Act on Special Measures Concerning Taxation (Special Provisions on Taxation of the Trust Corporation of a Special Investment Trust) from the special investment trust prescribed in paragraph (5) of the Article."
- (8) The provisions of paragraph (1) apply only where the trust corporation for a special investment trust has filed a tax return prescribed in Article 2, item (xxxi) of the Corporation Tax Act (referred to in the following paragraph as a "tax return") for the business year for which the trust corporation seeks the application of the provisions of the paragraph, with an application made therein to seek the inclusion in deductible expenses of the amount to be included in the amount of deductible expenses pursuant to the provisions of paragraph (1) and a written statement attached thereto regarding the calculation of the amount to be included in the amount of deductible expenses, and preserved the documents that certify that the requirements listed in item (i), (b) and (c) of the paragraph are satisfied.
- (9) Even where the trust corporation for a special investment trust has filed a tax return without the application or written statement set forth in the preceding paragraph attached thereto or failed to preserve the documents on the calculation set forth in the paragraph, the district director of the tax office may, when they find any unavoidable reason for the trust corporation's failure to make a necessary application, attach a necessary written statement or preserve the necessary documents on the calculation, apply the provisions of paragraph (1).
- (10) The provisions of paragraph (1), paragraph (2), paragraph (6) and the preceding two paragraphs apply mutatis mutandis where the trust corporation prescribed in Article 4-7 of the Corporation Tax Act for a special investment trust (limited to a trust corporation that is deemed to be a foreign corporation pursuant to the provisions of Article 4-7, item (ii) of the Act as applied mutatis mutandis pursuant to Article 2-2, paragraph (3) and therefore be subject to the provisions of this Act, which falls under any of the categories of foreign corporation listed in Article 141, items (i) through (iii) of the Corporation Tax Act), pursuant to the provisions of Article 142 of the Act, calculates the amount of income categorized as domestic source income prescribed in Article 141 of the Act in accordance with the provisions of the Act. In this case, the phrase "Any amount ...from a special investment trust..., which pertains to the business year" in paragraph (1) is deemed to be replaced with "Any amount ...from a special investment trust..., which pertains to a business conducted in Japan and also pertains to the business year", and the phrase "Article 23, paragraph (1) of the Corporation Tax Act" is deemed to be replaced

with "Article 23, paragraph (1) of the Corporation Tax Act applied in the case where, pursuant to the provisions of Article 142 of the Corporation Tax Act, calculation is made in accordance with the provisions of Article 23, paragraph (1) of the Act".

- (11) The amount of distribution of profit from a special investment trust set forth in paragraph (1) as applied mutatis mutandis pursuant to the preceding paragraph (limited to a special investment trust that satisfies the requirements listed in item (i), (b) and (c) of the paragraph), which is received by a domestic corporation (such amount hereinafter referred to in this paragraph and the following paragraph as "amount of distribution of profit from foreign special investment trust") is deemed to be excluded from the amount of dividend, etc. prescribed in Article 69, paragraph (8) of the Corporation Tax Act, and the amount of distribution of profit from a foreign special investment trust to be received by a foreign subsidiary prescribed in Article 69, paragraph (8) of the Act is deemed to be excluded from the amount of dividend, etc. from a foreign second-tier subsidiary prescribed in Article 68, paragraph (11) of the Act.
- (12) The amount of distribution of profit from a special investment trust to be received by a foreign corporation (limited to the amount to be received by a foreign corporation listed in Article 141, items (i) through (iii) of the Corporation Tax Act (the amount to be received by a foreign corporation listed in item (ii) or item (iii) of the Article is limited to the amount to be attributed to the business prescribed in these provisions that is conducted by the foreign corporation)) is deemed to be the amount of dividend of surplus to be received from a domestic corporation prescribed in Article 138, item (v), (a) of the Act, and the provisions of the Act and any other provisions of laws and regulations concerning corporation tax (excluding the provisions of Article 23, paragraph (1) of the Corporation Tax Act applied in the case where, pursuant to the provisions of Article 142 of the Act, calculation is made in accordance with the provisions of Article 23, paragraph (1) of the Act) are applied thereto.
- (13) Beyond what is specified in paragraph (8) and paragraph (9), the application of the provisions of paragraphs (1) through (7) and the preceding three paragraphs, and other necessary matters concerning the application of the provisions of laws and regulations concerning corporation tax on income for the relevant business year of a trust corporation prescribed in Article 4-7 of the Corporation Tax Act from a special investment trust are specified by Cabinet Order.

**Section 22 Special Provisions on Taxation on a Consolidated  
Corporation's Transactions with Its Foreign Affiliates**



(Special Provisions on Taxation on a Consolidated Corporation's Transactions with Its Foreign Affiliates)

Article 68-88 (1) Where a consolidated corporation has, in each consolidated business year beginning on or after April 1, 2002, conducted a transaction for the sale of assets, purchase of assets, provision of services or any other transaction with a foreign affiliate of the consolidated corporation (meaning a foreign corporation that has a relationship with the consolidated corporation whereby either corporation holds, directly or indirectly, shares or capital contributions that account for 50 percent or more of the total number or total amount of issued shares of or capital contributions to the other corporation (excluding the shares or capital contributions held by the other corporation) or any other special relationship specified by Cabinet Order (referred to in the following paragraph and paragraph (5) as a "special relationship"); hereinafter the same applies in this Article), if the amount of the consideration received by the consolidated corporation from the foreign affiliate with respect to the transaction (excluding, depending on the category of foreign corporation listed in Article 141, items (i) through (iii) of the Corporation Tax Act corresponding to the foreign affiliate, a transaction from which the foreign affiliate earns the domestic source income listed in the relevant item, which is specified by Cabinet Order prescribed in Article 66-4, paragraph (1); hereinafter referred to in this Article as a "transaction with a foreign affiliate") is below the arm's length price or if the amount of the consideration paid by the consolidated corporation to the foreign affiliate with respect to the transaction is over the arm's length price, with regard to the application of the provisions of the Act and any other provisions concerning corporation tax on the consolidated corporation's consolidated income for the consolidated business year, the transaction with the foreign affiliate is deemed to have been conducted at the arm's length price.

(2) The arm's length price prescribed in the preceding paragraph means the amount calculated by the method specified in each of the following items for the category of transaction listed in the relevant item corresponding to the transaction with the foreign affiliate:

(i) sale or purchase of inventory assets: Any of the following methods (the method listed in (d) may be applied only where the methods listed in (a) through (c) are unavailable):

(a) comparable uncontrolled price method (meaning the method which uses, as the amount of the consideration for a transaction with a foreign affiliate, the amount equivalent to the amount of the consideration for a transaction wherein a seller and a buyer who have no special relationship to each other have sold or bought inventory assets of the same type as the inventory assets pertaining to the transaction with the foreign affiliate, under

- circumstances where the transaction level, transaction volume and any other conditions are similar to those of the transaction with the foreign affiliate (in the case where such inventory assets of the same type have been sold or bought under circumstances where the transaction level, transaction volume and any other conditions are different from those of the transaction with the foreign affiliate, and any variance arising from such difference in the conditions can be adjusted, the amount of the consideration as adjusted is included);
- (b) resale price method (meaning the method which uses, as the amount of the consideration for a transaction with a foreign affiliate, the amount calculated by deducting, from the amount of the consideration gained by the buyer of the inventory assets involved in the transaction with the foreign affiliate for having sold the inventory assets to a person with no special relationship thereto (hereinafter referred to in this paragraph as the "resale price"), the amount of normal profit (meaning the amount calculated by multiplying the resale price by the normal profit margin specified by Cabinet Order);
  - (c) cost plus method (meaning the method which uses, as the amount of the consideration for a transaction with a foreign affiliate, the amount calculated by adding, to the amount of the cost incurred by the seller of the inventory assets involved in the transaction with the foreign affiliate for having acquired the inventory assets by purchase, manufacture or any other acts, the amount of normal profit (meaning the amount calculated by multiplying the amount of cost by the normal profit margin specified by Cabinet Order); or
  - (d) a method equivalent to the methods listed in (a) through (c) or any other method specified by Cabinet Order.
- (ii) a transaction other than the transaction listed in the preceding item: Any of the following methods (the method listed in (b) may be applied only where the method listed in (a) is unavailable):
    - (a) a method equivalent to the methods listed in (a) through (c) of the preceding item; or
    - (b) a method equivalent to the method listed in (d) of the preceding item.
- (3) Any part of the amount of a contribution (meaning the amount of a contribution prescribed in Article 37, paragraph (7) of the Corporation Tax Act as applied mutatis mutandis pursuant to Article 81-6, paragraph (6) of the Act; hereinafter the same applies in this paragraph and the following paragraph) expended by a consolidated corporation in each consolidated business year, which has been paid to a foreign affiliate of consolidated corporation (excluding any amount of contribution paid to a foreign affiliate that falls under the category of foreign corporation listed in Article 141, items (i) through (iii) of

the Act, which is included in the amount of gross profits in the calculation of the foreign affiliate's income for the relevant business year), does not be included in the amount of deductible expenses in the calculation of the amount of the consolidated corporation's consolidated income for the relevant consolidated business year. In this case, with regard to the application of the provisions of Article 81-6 of the Act to the consolidated corporation, the term "the following paragraph" in paragraph (1) of the Article is deemed to be replaced with "the following paragraph or the provisions of Article 68-88, paragraph (3) of the Act on Special Measures Concerning Taxation (Special Provisions on Taxation on a Consolidated Corporation's Transactions with Its Foreign Affiliates)."

- (4) In the case where the provisions of paragraph (1) apply, any variance between the amount of the consideration for a transaction with a foreign affiliate and the arm's length price prescribed in the paragraph which pertains to the transaction with the foreign affiliate (excluding a variance that is deemed to be the amount of the contribution) is not included in the amount of deductible expenses in the calculation of the consolidated corporation's consolidated income for each consolidated business year.
- (5) In the case specified by Cabinet Order where a consolidated corporation conducts a transaction with a foreign affiliate of the consolidated corporation via another person (excluding any other foreign affiliate of the consolidated corporation, and a domestic corporation with a special relationship to such other foreign affiliate; hereinafter referred to in this paragraph as a "non-affiliate"), the transaction between the consolidated corporation and the non-affiliate is deemed to be a transaction with a foreign affiliate by the consolidated corporation, and the provisions of paragraph (1) are applied thereto.
- (6) Where the relevant official of the National Tax Agency, the relevant official of the Tax Office or Regional Taxation Bureau with jurisdiction over the consolidated parent corporation's place for tax payment or the relevant official of the Tax Office or Regional Taxation Bureau with jurisdiction over the location of the head office or principal office of a consolidated subsidiary corporation has requested the consolidated corporation to present or submit the books and documents that are considered to be necessary for the calculation of the arm's length price prescribed in paragraph (1) which pertains to a transaction with a foreign affiliate conducted by the consolidated corporation in each consolidated business year or copies of such books and documents (in the case where the consolidated corporation, instead of preparing or preserving such books and documents, prepares or preserves electronic or magnetic records (meaning records made in an electronic form, a magnetic form, or any other form not recognizable to human perception, which

are used in information processing by computers), such electronic or magnetic records are included; hereinafter the same applies in this Article), if the consolidated corporation has failed to present or submit these books and documents or copies thereof without delay, the district director may presume the amount calculated by the method listed in any of the following items (the method listed in item (ii) may be applied only where the method listed in (i) is unavailable) to be the arm's length price, and thereby make a reassessment prescribed in Article 2, item (xliii) of the Corporation Tax Act (referred to in paragraph (16) as a "reassessment") or a determination prescribed in item (xliv) of the Article (referred to in paragraph (16) as a "determination") with respect to the consolidated corporation's amount of consolidated income or amount of consolidated loss for the relevant consolidated business year:

- (i) the method listed in paragraph (2), item (i), (b) or (c) or the method listed in paragraph (2), item (ii), (a) (excluding the method equivalent to the method listed in paragraph (2), item (i), (a)), which is applied based on the gross profit margin gained by another corporation from its business on condition that such other corporation's business is the same type as the consolidated corporation's business involving the transaction with the foreign affiliate, and that the size and other details are similar between the two businesses, or any other ratio specified by Cabinet Order as a ratio equivalent to the gross profit margin; or
  - (ii) a method specified by Cabinet Order as being equivalent to the method prescribed in paragraph (2), item (i), (d) or the method listed in paragraph (2), item (ii), (b) (limited to the method equivalent to the method specified by Cabinet Order).
- (7) The relevant official of the National Tax Agency, the relevant official of the Tax Office or Regional Taxation Bureau with jurisdiction over a consolidated parent corporation's place for tax payment or the relevant official of the Tax Office or Regional Taxation Bureau with jurisdiction over the location of the head office or principal office of a consolidated subsidiary corporation may, when it is necessary in the examination concerning the transaction between the consolidated corporation and a foreign affiliate of the consolidated corporation, request the consolidated corporation to present or submit the books and documents preserved by the foreign affiliate or copies thereof. In this case, the consolidated corporation must endeavor to obtain the books and documents or copies thereof when requested to present or submit them.
- (8) Where a consolidated parent corporation or consolidated subsidiary corporation has failed to present or submit the books and documents or copies thereof prescribed in paragraph (6) without delay, the relevant official of the National Tax Agency, the relevant official of the Tax Office or Regional Taxation Bureau with jurisdiction over the consolidated parent corporation's

place for tax payment or the relevant official of the Tax Office or Regional Taxation Bureau with jurisdiction over the location of the head office or principal office of the consolidated subsidiary corporation may, when it is necessary for the calculation of the consolidated corporation's arm's length price prescribed in paragraph (1) which pertains to a transaction with a foreign affiliate in each consolidated business year, ask questions of a person who is engaged in a business that is the same type as the consolidated corporation's business involving the transaction with the foreign affiliate, or inspect the books and documents concerning the business, to the extent considered necessary for such calculation.

- (9) The authority to ask questions or conduct an inspection pursuant to the provisions of the preceding paragraph is not construed as being granted for criminal investigation.
- (10) The relevant official of the National Tax Agency, the Regional Taxation Bureau, or the Tax Office, when asking questions or conducting an inspection pursuant to the provisions of paragraph (8), must carry an identification card and present it to the person concerned when requested.
- (11) Any person who falls under any of the following is punished by a fine of not more than 100,000 yen:
- (i) a person who has failed to answer or who has given a false answer to the questions given by the relevant official pursuant to the provisions of paragraph (8) or has refused, obstructed or avoided the inspection pursuant to the provisions of the paragraph; or
  - (ii) a person who has presented books and documents which contain false statements or records concerning the inspection set forth in the preceding item.
- (12) Where the representative person of a corporation (including the administrator of an association or foundation without juridical personality) or an agent, employee or other worker of a corporation or an individual has committed any of the acts of violation set forth in the preceding paragraph with regard to the operations of the corporation or individual, not only the offender is punished but also the corporation or individual is punished by the fine prescribed in the paragraph.
- (13) Where the provisions of the preceding paragraph apply to an association or foundation without juridical personality, its representative person or administrator represents the association or foundation without juridical personality with regard to its procedural act, and the legal provisions concerning criminal procedure that are applicable in the case where a corporation stands as the accused or the suspect apply *mutatis mutandis*.
- (14) A consolidated parent corporation must, where the consolidated parent corporation or its consolidated subsidiary corporation has conducted a

transaction with a foreign affiliate of the consolidated corporation in each consolidated business year, attach a document stating the foreign affiliate's name and the location of its head office or principal office and any other matters specified by Order of the Ministry of Finance, to the consolidated tax return (meaning a consolidated tax return prescribed in Article 2, item (xxxii) of the Corporation Tax Act) for the relevant consolidated business year.

- (15) A consolidated subsidiary corporation, where it has conducted a transaction with a foreign affiliate of the consolidated corporation in each consolidated business year, attach a document stating the foreign affiliate's name and the location of its head office or principal office and any other matters specified by Order of the Ministry of Finance, to the document prescribed in Article 81-25, paragraph (1) of the Corporation Tax Act for the relevant consolidated business year which states the individually attributed amount, etc. prescribed in Article 81-25, paragraph (1) of the Act.
- (16) A reassessment or determination (hereinafter referred to in this paragraph as a "reassessment or determination") or an assessment and determination prescribed in Article 32, paragraph (5) of the Act on General Rules for National Taxes (hereinafter referred to in this paragraph as an "assessment and determination"), which is listed in any of the following items, may be made within six years from the due date or other date specified in the relevant item, notwithstanding the provisions of Article 70, paragraphs (1) through (4) of the Act (excluding the part concerning the reassessment listed in paragraph (2), item (ii) and item (iii) of the Article (limited to a reassessment pertaining to the amount of net loss, etc. prescribed in the paragraph)). In this case, with regard to the application of the provisions of Article 70, paragraph (5) and Article 71, paragraph (1) of the Act: in Article 70, paragraph (5) of the Act, the phrase "preceding paragraphs" is deemed to be replaced with "preceding paragraphs and the provisions of Article 68-88, paragraph (16) of the Act on Special Measures Concerning Taxation (Special Provisions on Taxation on a Consolidated Corporation's Transactions with Its Foreign Affiliates)"; in Article 71, paragraph (1) of the Act, the phrase "preceding Article" is deemed to be replaced with "preceding Article and the provisions of Article 68-88, paragraph (16) of the Act on Special Measures Concerning Taxation (Special Provisions on Taxation on a Consolidated Corporation's Transactions with Its Foreign Affiliates)," and the phrase "preceding Article" is deemed to be replaced with "preceding Article and the paragraph [Article 68-88, paragraph (16) of the Act]."
- (i) a reassessment or determination of corporation tax to be made based on the fact that a consolidated corporation has conducted a transaction with a foreign affiliate of the consolidated corporation at the amount of consideration that is different from the arm's length price prescribed in

- paragraph (1), or a reassessment or determination of corporation tax to be made, upon the reassessment or determination, to make a change to the tax base, etc. or tax amount, etc. prescribed in Article 19, paragraph (1) of the Act on General Rules for National Taxes: The statutory due date of tax return prescribed in Article 2, item (vii) of the Act with regard to corporation tax pertaining to the relevant reassessment or determination (for a reassessment based on a return of claim for a refund prescribed in Article 61, paragraph (1) of the Act: the day on which the return of claim for a refund has been filed); and
- (ii) a reassessment or determination of corporation tax to be made based on the fact prescribed in the preceding item or submission of a tax return form prescribed in Article 2, item (vi) of the Act on General Rules for National Taxes (excluding a return form within the due date prescribed in Article 17, paragraph (2) of the Act; hereinafter referred to in this item as a "tax return form"), or an assessment and determination to be made, upon the reassessment or determination or submission of a tax return form, so as to impose additional tax prescribed in Article 69 of the Act with regard to the corporation tax to which the change prescribed in the preceding item should be made upon the reassessment or determination or the submission of a tax return form: The date of the establishment of the relevant tax liability.
- (17) Where, with regard to corporation tax, the tax amount payable due to the fact that a consolidated corporation has conducted a transaction with a foreign affiliate of the consolidated corporation at the amount of consideration that is different from the arm's length price prescribed in paragraph (1) falls short, or the amount of the refund prescribed in Article 2, item (vi) of the Act on General Rules for National Taxes is in excess, the prescription of the right of collection of national taxes prescribed in Article 72, paragraph (1) of the Act does not run for one year from the statutory due date prescribed in Article 72, paragraph (1) of the Act for the corporation tax, except where the provisions of Article 73, paragraph (3) of the Act apply.
- (18) In the case referred to in the preceding paragraph, the provisions of the proviso of Article 73, paragraph (3) of the Act on General Rules for National Taxes apply *mutatis mutandis*. In this case, the phrase "two years" in the proviso is deemed to be replaced with "one year."
- (19) Where the provisions of paragraph (1) apply, and with respect to the arm's length price prescribed in paragraph (1) which pertains to a transaction with a foreign affiliate conducted between a consolidated corporation and a foreign affiliate of the consolidated corporation (limited to a foreign affiliate who is deemed, pursuant to the provisions of a convention prescribed in Article 139 of the Corporation Tax Act (hereinafter referred to in this paragraph and paragraph (1) of the following Article as a "tax convention"), to be a resident or

corporation in a Contracting State other than Japan (hereinafter referred to in the this paragraph and paragraph (1) of the following Article as the "other Contracting State") of the tax convention), the Minister of Finance has reached an agreement under the tax convention with the competent authority of other Contracting State, or any other requirement specified by Cabinet Order is satisfied, the regional commissioner or the district director may, pursuant to the provisions of Cabinet Order, grant exemption from the part of the delinquent tax imposed with regard to the corporation tax payable by the consolidated parent corporation of the consolidated corporation pursuant to the provisions of paragraph (1), which corresponds to the base period for the calculation of the delinquent tax for which the Minister of Finance has reached an agreement with the competent authority of the other contracting State.

(20) Matters concerning the determination as to whether or not a foreign corporation falls under the category of foreign affiliate, and other necessary matters concerning the application of the provisions of paragraphs (1) through (6) are specified by Cabinet Order.

(Grace Period for Tax Payment under the Special Provisions on Taxation on a Consolidated Corporation's Transactions with Its Foreign Affiliates)

Article 68-88-2 (1) Where a consolidated parent corporation has, pursuant to the provisions of a tax convention, filed an objection prescribed in the tax convention with the Commissioner of the National Tax Agency, the district director, etc. (meaning the district director, etc. prescribed in Article 46, paragraph (1) of the Act on General Rules for National Taxes; hereinafter the same applies in this Article) may, upon application by the consolidated corporation that has filed the objection, grant a grace period for tax payment, up to the amount calculated pursuant to the method specified by Cabinet Order as the amount of corporation tax payable based on the reassessment or determination listed in paragraph (16), item (i) of the preceding Article which pertains to the objection (limited to the amount to be covered by the consultation prescribed in the tax convention with the other Contracting State which pertains to the objection), including the amount of additional tax prescribed in Article 69 of the Act with regard to the amount of corporation tax, for the period from the due date for tax payment (meaning the due date for tax payment prescribed in Article 37, paragraph (1) of the Act; in the case where the application has been filed after the due date for tax payment, the period starts from the date of the filing of the application) until the day on which one month has elapsed since the day following the day on which a reassessment has been made pursuant to the provisions of Article 26 of the Act based on an agreement with the competent authority of the other Contracting State (in the case where there is no such agreement or in any other case specified by



Cabinet Order: the date specified by Cabinet Order) (this period is referred to as the "grace period for tax payment" in paragraph (7)); provided, however, that this does not apply where the consolidated corporation that has filed the application has been, at the time of filing the application, delinquent in payment of national taxes other than the amount of corporation tax.

- (2) The district director, etc., when granting a grace period for tax payment pursuant to the provisions of the preceding paragraph (hereinafter referred to in this Article as a "grace period for tax payment"), collect security equivalent to the amount under the grace period; provided, however, that this does not apply where the tax amount under the grace period is not more than 500,000 yen or where there are special circumstances where it is impossible to collect security.
- (3) The provisions of Article 46, paragraph (6) of the Act on General Rules for National Taxes apply mutatis mutandis where security is collected pursuant to the provisions of the preceding paragraph.
- (4) The provisions of Article 47 and Article 48 of the Act on General Rules for National Taxes apply mutatis mutandis where a grace period for tax payment is granted or is not granted. In this case, the phrase "paragraphs (1) through (3) or paragraph (7) of the preceding Article" in Article 47, paragraph (2) of the Act is deemed to be replaced with "Article 68-88-2, paragraph (1) of the Act on Special Measures Concerning Taxation (Grace Period for Tax Payment under the Special Provisions on Taxation on a Consolidated Corporation's Transactions with Its Foreign Affiliates)."
- (5) Where a consolidated parent corporation that has been granted a grace period for tax payment falls under any of the cases listed in the following items, the district director, etc. may rescind the grace. In this case, the provisions of Article 49, paragraph (2) and paragraph (3) of the Act on General Rules for National Taxes apply mutatis mutandis:
  - (i) where the consolidated corporation has withdrawn the application set forth in paragraph (1);
  - (ii) where the consolidated corporation does not cooperate in the submission of the necessary documents for the consultation set forth in paragraph (1);
  - (iii) where there is a fact that falls under any of the items of Article 38, paragraph (1) of the Act on General Rules for National Taxes, and it is found to be impossible for the consolidated corporation to pay the corporation tax under the grace period in full within the period;
  - (iv) where the consolidated corporation does not follow the order issued by the district director, etc. pursuant to the provisions of Article 51, paragraph (1) of the Act on General Rules for National Taxes with regard to the security provided for the corporation tax under the grace period; or
  - (v) beyond what is listed in the preceding items, where it is found to be

inappropriate to maintain the grace period due to any change in the state of the corporation's property or other circumstances.

- (6) With regard to the application of the provisions of the Act on General Rules for National Taxes and the National Tax Collection Act to corporation tax under a grace period for tax payment: in the Act on General Rules for National Taxes, the term "grace period for tax payment" in Article 2, item (viii) is deemed to be replaced with "grace period for tax payment (including a grace period for tax payment pursuant to the provisions of Article 68-88-2, paragraph (1) of the Act on Special Measures Concerning Taxation (Grace Period for Tax Payment under the Special Provisions on Taxation on a Consolidated Corporation's Transactions with Its Foreign Affiliates))", the term "grace period for tax payment" in Article 52, paragraph (1) is deemed to be replaced with "grace period for tax payment (including a grace period for tax payment pursuant to the provisions of Article 66-88-2, paragraph (1) of the Act on Special Measures Concerning Taxation (Grace Period for Tax Payment under the Special Provisions on Taxation on a Consolidated Corporation's Transactions with Its Foreign Affiliates); hereinafter the same applies in this paragraph)", and the term "grace period for tax payment" in Article 55, paragraph (1), item (i) and Article 73, paragraph (4) is deemed to be replaced with "grace period for tax payment (including a grace period for tax payment pursuant to the provisions of Article 68-88-2, paragraph (1) of the Act on Special Measures Concerning Taxation (Grace Period for Tax Payment under the Special Provisions on Taxation on a Consolidated Corporation's Transactions with Its Foreign Affiliates))"; in the National Tax Collection Act, the term "grace period for tax payment" in Article 2, item (ix) and (x) is deemed to be replaced with "grace period for tax payment (including a grace period for tax payment pursuant to the provisions of Article 68-88-2, paragraph (1) of the Act on Special Measures Concerning Taxation (Grace Period for Tax Payment under the Special Provisions on Taxation on a Consolidated Corporation's Transactions with Its Foreign Affiliates))", and the term "Grace Period for Tax Payment)" in Article 151, paragraph (1) is deemed to be replaced with "Grace Period for Tax Payment) (including a grace period for tax payment pursuant to the provisions of Article 68-88-2, paragraph (1) of the Act on Special Measures Concerning Taxation (Grace Period for Tax Payment under the Special Provisions on Taxation on a Consolidated Corporation's Transactions with Its Foreign Affiliates))".
- (7) Where a grace period for tax payment has been granted, exemption is granted from the part of the delinquent tax imposed with regard to the corporation tax under the grace period, which corresponds to the grace period for tax payment (in the case where the application set forth in paragraph (1) has been filed before the due date for tax payment set forth in the paragraph, the grace

period for tax payment includes the period from the date of the filing of the application until the due date for tax payment); provided, however, that where any event has occurred which can be the cause of a rescission pursuant to the provisions of paragraph (5), the district director, etc. may choose not to grant exemption with regard to such part of delinquent tax which corresponds to the period after the day on which the event has occurred.

- (8) Necessary matters concerning the procedure for the application for a grace period for tax payment are specified by Cabinet Order.

**Section 23 Special Provisions on Taxation of Interest on Liabilities  
Payable to a Consolidated Corporation's Foreign Controlling  
Shareholders**

(Special Provisions on Taxation of Interest on Liabilities Payable to a  
Consolidated Corporation's Foreign Controlling Shareholders)

Article 68-89 (1) Where a consolidated corporation pays, in each consolidated business year beginning on or after April 1, 2002, interest on liabilities, etc. to its foreign controlling shareholder, etc. or fund provider, etc., and the average balance of liabilities regarding the liabilities owed, for the relevant consolidated business year, to its foreign controlling shareholder, etc. and the fund provider, etc., exceeds threefold the amount of equity interest held by the foreign controlling shareholder, etc. for the relevant consolidated business year, the amount calculated pursuant to the method specified by Cabinet Order as such excess in the amount of interest on liabilities, etc. payable by the consolidated corporation to the foreign controlling shareholder, etc. and fund provider, etc. in the relevant consolidated business year is not included in the amount of deductible expenses in the calculation of the amount of consolidated income of the consolidated corporation for the relevant consolidated business year; provided, however, that this does not apply where the average balance of liabilities regarding the total liabilities of the consolidated corporation for the relevant consolidated business year (limited to those which can be the cause of payment of interest on liabilities, etc.; the same applies in the following paragraph and paragraph (3)) is not more than threefold the amount of its equity capital.

- (2) Where the provisions of the preceding paragraph apply, and a consolidated corporation has any liabilities arising from a specified bond transaction with a repurchase/resale agreement, etc. among its liabilities owed to its foreign controlling shareholder, etc. and fund provider, etc., the consolidated corporation may use, as the multiple number applicable to the equity interest held by the foreign controlling shareholder, etc. of the consolidated corporation or applicable to the amount of equity capital of the consolidated corporation,

the multiple number applicable to the equity interest held by a foreign controlling shareholder, etc. of the consolidated corporation or applicable to the amount of equity capital, which is calculated pursuant to the method specified by Cabinet Order based on [1] the average balance of liabilities calculated by deducting the average balance of liabilities regarding the specified bond transaction with a repurchase/resale agreement, etc. calculated pursuant to the method specified by Cabinet Order from the average balance of liabilities regarding the liabilities owed to the foreign controlling shareholder, etc. and fund provider, etc., or [2] the average balance of liabilities calculated by deducting the average balance of liabilities regarding the specified bond transaction with a repurchase/resale agreement, etc. calculated pursuant to the method specified by Cabinet Order from the average balance of liabilities regarding the total liabilities for the relevant consolidated business year, and thereby determine the amount calculated by deducting the amount of interest on liabilities, etc. arising from the specified bond transaction with a repurchase/resale agreement, etc. calculated pursuant to the method specified by Cabinet Order from the amount of interest on liabilities, etc. payable to the consolidated corporation's foreign controlling shareholder, etc. and fund provider, etc. to be the amount of interest on liabilities, etc. payable to the consolidated corporation's foreign controlling shareholder, etc. and fund provider, etc. In this case, the term "threefold" in the preceding paragraph is deemed to be replaced with "twofold."

- (3) Where the provisions of paragraph (1) apply, the consolidated corporation may use, in lieu of the multiple number applicable to the equity interest held by a foreign controlling shareholder, etc. of the consolidated corporation and applicable to the amount of equity capital of the consolidated corporation, a multiple number that is found to be appropriate in light of the percentage specified by Cabinet Order as the percentage of the total liabilities of another domestic corporation to its net assets on condition that such other domestic corporation's business is the same type as the consolidated corporation's business, and the size and other details are similar between the two businesses.
- (4) In this Article, the meanings of the terms listed in the following items are as prescribed respectively in those items:
- (i) foreign controlling shareholder, etc.: A nonresident prescribed in Article 2, paragraph (1), item (i)-2 or foreign corporation who has a relationship with a consolidated corporation whereby the nonresident or foreign corporation holds, directly or indirectly, shares or capital contributions that account for 50 percent or more of the total number or the total amount of issued shares of or capital contributions to the consolidated corporation (excluding the shares or capital contributions held by the consolidated corporation) or any other special relationship specified by Cabinet Order;

- (ii) fund provider, etc.: A person who provides a consolidated corporation with funds, and a person specified by Cabinet Order as being related to such provision of funds;
  - (iii) interest on liabilities, etc.: Interest on liabilities (including moneys specified by Cabinet Order prescribed in Article 66-5, paragraph (4), item (iii) as being equivalent thereto; hereinafter the same applies in this item) and any other expense specified by Cabinet Order (excluding the interest on liabilities and any other expense specified by Cabinet Order, which are included in the taxable income of the person who is to receive payment thereof, and any other expense specified by Cabinet Order prescribed in Article 66-5, paragraph (4), item (iii));
  - (iv) liabilities owed to a foreign controlling shareholder, etc. and a fund provider, etc.: Liabilities owed to a foreign controlling shareholder, etc. (limited to those which can be the cause of payment of interest on liabilities, etc.) and liabilities owed to a fund provider, etc. that are specified by Cabinet Order (limited to those which can be the cause of payment of interest on liabilities, etc.);
  - (v) average balance of liabilities: The amount calculated pursuant to the method specified by Cabinet Order as the average amount of liabilities;
  - (vi) equity interest held by a foreign controlling shareholder, etc.: The amount calculated pursuant to the method specified by Cabinet Order as the interest in a consolidated corporation's net assets held by a foreign controlling shareholder, etc. for each consolidated business year;
  - (vii) amount of equity capital: The amount calculated pursuant to the method specified by Cabinet Order as the amount of net assets for each consolidated business year;
  - (viii) specified bond transaction with a repurchase/resale agreement, etc.: A bond transaction with a repurchase/resale agreement prescribed in Article 66-5, paragraph (4), item (xiii); and
  - (ix) taxable income: Taxable income prescribed in Article 66-5, paragraph (4), item (ix).
- (5) The provisions of paragraph (2) apply only where a consolidated corporation has filed a consolidated tax return, etc. with a document attached thereto stating that it seeks the application of the provisions of the paragraph and a written statement attached thereto concerning the calculation of the average balance of liabilities regarding the liabilities from a specified bond transaction with a repurchase/resale agreement, etc. and the amount of interest on liabilities, etc., both of which is deducted pursuant to the provisions of the paragraph, and preserved the documents on such calculation.
- (6) Even where a consolidated corporation has filed a consolidated tax return, etc. without the document or written statement set forth in the preceding

paragraph attached thereto or failed to preserve the documents on the calculation set forth in the paragraph, the district director may, when they find any unavoidable reason for the consolidated corporation's failure to attach a necessary document or written statement or preserve the necessary documents on the calculation, apply the provisions of paragraph (2), only if the document and written statement as well as the documents on the calculation are submitted.

(7) The provisions of paragraph (3) apply only where a consolidated corporation has filed a consolidated tax return, etc. with a document attached thereto stating that it seeks the application of the paragraph, and preserved documents or any other materials (hereinafter referred to in the following paragraph as "materials, etc.") that certify that the multiple number that it applies is appropriate.

(8) Even where a consolidated corporation has filed a consolidated tax return, etc. without a document attached thereto stating that it seeks the application of the provisions of paragraph (3) or failed to preserve the materials, etc. that certify that the multiple number that it applies is appropriate, the district director may, when they find any unavoidable reason for the consolidated corporation's failure to attach a necessary document or preserve the necessary materials, etc., apply the provisions of the paragraph, only if the document and the materials, etc. are submitted.

(9) The calculation of the average balance of liabilities, etc. regarding liabilities prescribed in paragraph (1) in the case where there is more than one foreign controlling shareholder, etc. prescribed in the paragraph, the application of the provisions of the Corporation Tax Act with respect to the amount excluded from the amount of deductible expenses pursuant to the provisions of the paragraph, and other necessary matters concerning the application of the provisions of the paragraph to paragraph (4) are specified by Cabinet Order.

**Section 24 Special Provisions on Taxation on the Income of a  
Consolidated Corporation's Specified Foreign Subsidiaries  
Subsection 1 Special Provisions on Taxation on the Income of a  
Consolidated Corporation's Specified Foreign Subsidiaries**

(Inclusion in Gross Profits of the Retained Income of a Consolidated  
Corporation's Specified Foreign Subsidiaries)

Article 68-90 (1) Where a foreign affiliate of any of the following consolidated corporations, which falls under the category of foreign affiliate specified by Cabinet Order as a company whose tax burden to be imposed on its income earned in a state or territory where its head office or principal office is located is significantly lower than the tax burden to be imposed on the income of a

corporation in Japan (hereinafter referred to in this Subsection as a "specified foreign subsidiary, etc."), in each business year, retains as part of the amount of undistributed income, pursuant to the provisions of Cabinet Order, any amount that is adjusted, with respect to the amount of undistributed income, based on the tax amount pertaining to the amount of undistributed income and the amount of dividend of surplus, dividend of profit or distribution of surplus prescribed in Article 23, paragraph (1), item (i) of the Corporation Tax Act (hereinafter referred to in this paragraph as "dividend of surplus, etc.") (such adjusted amount hereinafter referred to in this Article as "eligible retained income"), the amount equivalent to the part of eligible retained income which is calculated pursuant to the method specified by Cabinet Order as the amount of income corresponding to the number of shares, etc. of the specified foreign subsidiary, etc. held by the consolidated corporation through direct and/or indirect ownership, while taking into consideration the contents of the claim (meaning a claim prescribed in Article 66-6, paragraph (1); the same applies in item (i)) vested in such shares, etc. (meaning shares or capital contributions; the same applies in this paragraph) (such part of eligible retained income hereinafter referred to in this Subsection as "individually taxable retained income") is deemed to be the amount of the consolidated corporation's profit, and included in its gross profits in the calculation of the amount of its consolidated income for the consolidated business year that includes the day on which two months have elapsed since the day following the last day of the relevant business year:

- (i) a consolidated corporation that holds shares, etc. of the foreign affiliate through direct and/or indirect ownership, the ratio of whose shares, etc. to the total number or total amount of issued shares of or capital contributions to the foreign affiliate (excluding the shares, etc. held by the foreign affiliate) (in the case where the foreign affiliated company is a corporation listed in (a) through (c): the ratio or the ratio listed in (a) through (c), whichever is larger; referred to in the following item as the "direct and/or indirect ownership ratio for shares, etc. of a foreign affiliate") is five percent or more:
  - (a) a corporation that issues shares, etc. in which more than one voting right (limited to a voting right pertaining to a resolution on dividend of surplus, etc.; hereinafter the same applies in this item) is vested (excluding a corporation listed in (c)): The ratio of the number of voting rights in the foreign affiliate held by the consolidated corporation through direct and/or indirect ownership to the total number of voting rights in the foreign affiliate;
  - (b) a corporation that issues shares, etc. in which different claims are vested (excluding a corporation listed in (c)): The ratio of the amount of dividend of surplus, etc. based on the claim for the foreign affiliate held by the

- consolidated corporation through direct and/or indirect ownership to the total amount of dividend of surplus, etc. receivable based on the claims vested in the shares, etc. of the foreign affiliate; or
- (c) a corporation that issues both shares, etc. in which more than one voting right is vested and shares, etc. in which different claims are vested: The ratio specified in (a) or the ratio specified in (b), whichever is larger.
- (ii) a consolidated corporation that belongs to a family shareholder group whose direct and/or indirect ownership ratio for shares, etc. of the foreign affiliated company is five percent or more (excluding the consolidated corporation listed in the preceding item).
- (2) In the preceding paragraph, the meanings of the terms listed in the following items are as prescribed respectively in those items:
- (i) foreign affiliated company: A foreign corporation prescribed in Article 66-6, paragraph (2), item (i);
- (ii) amount of undistributed income: An amount adjusted, with respect to the amount of income of a specified foreign subsidiary, etc. in its settlement of accounts for each business year, pursuant to the method specified by Cabinet Order, based on the amount calculated in accordance with the standards specified by Cabinet Order in a manner equivalent to the manner for calculating the amount of income for each business year pursuant to the Corporation Tax Act and this Act, in terms of the amount of loss incurred in each of the business years that commenced within seven years before the first day of the relevant business year;
- (iii) number of shares, etc. (held) through direct and/or indirect ownership: The number of shares, etc. (held) through direct and/or indirect ownership prescribed in Article 66-6, paragraph (2), item (iii);
- (iv) number of voting rights (held) through direct and/or indirect ownership: The number of voting rights (held) through direct and/or indirect ownership prescribed in Article 66-6, paragraph (2), item (iv);
- (v) amount of dividend of surplus, etc. based on the claims (held) through direct and/or indirect ownership: The amount of dividend of surplus, etc. based on the claims (held) through direct and/or indirect ownership prescribed in Article 66-6, paragraph (2), item (v); and
- (vi) family shareholder group: The family shareholder group prescribed in Article 66-6, paragraph (2), item (vi).
- (3) With regard to the application of the provisions of paragraph (1) in the case where a specified foreign subsidiary, etc. of a consolidated corporation listed in each item of paragraph (1) (excluding a company engaged in, as its principal business, the holding of shares (including capital contributions) or bonds, the provision of industrial property rights or any other rights concerning technology, production methods involving special technology or any other



equivalent rights or methods (including the right to use these rights) or copyrights (including rights of publication, neighboring rights and any other equivalent rights) or the lending of vessels or aircrafts) has an office, store, factory or any other fixed facility that is considered to be necessary for conducting its principal business in the state or territory where its head office or principal office is located, and takes charge of managing, controlling and operating the business by itself (referred to as the "case where a specified foreign subsidiary, etc. has a fixed facility" in the following paragraph), the phrase "amount that is adjusted" in the paragraph is deemed to be replaced with "amount that is adjusted,..., after deducting therefrom the amount equivalent to ten percent of the amount of expense specified by Cabinet Order as a personnel expense for people engaged in the business at the specified foreign subsidiary, etc."

- (4) Where a specified foreign subsidiary, etc. prescribed in the preceding paragraph that is the specified foreign subsidiary, etc. of a consolidated corporation listed in each item of paragraph (1) has a fixed facility in the state or territory where its head office or principal office is located, and falls under any of the cases listed in the following items depending on the type of business listed in the following items to which its principal business corresponds in each business year, the provisions of paragraph (1) and the preceding paragraph do not apply to the eligible retained income of the specified foreign subsidiary, etc. for the relevant business year:
- (i) wholesale business, banking business, trust business, financial instruments business, insurance business, water transportation business or air transportation business: The case specified by Cabinet Order in which the specified foreign subsidiary, etc. conducts business mainly with a person other than [1] a resident listed in each item of Article 40-4, paragraph (1) who is the resident to which the specified foreign subsidiary, etc. pertains, [2] a domestic corporation listed in each item of Article 66-6, paragraph (1) that is the domestic corporation of the specified foreign subsidiary, etc., [3] a consolidated corporation listed in each item of paragraph (1) that is the consolidated corporation of the specified foreign subsidiary, etc. or [4] any other person specified by Cabinet Order as being equivalent to the persons mentioned in [1] through [3]; or
  - (ii) business other than those listed in the preceding item: The case specified by Cabinet Order in which the specified foreign subsidiary, etc. conducts a business mainly in the state or territory where its head office or principal office is located (including the water areas belonging to the state or territory which are specified by Cabinet Order prescribed in Article 66-6, paragraph (4), item (ii)).
- (5) The consolidated parent corporation of a consolidated corporation listed in

each item of paragraph (1) must attach a balance sheet and profit and loss statement for each business year regarding the specified foreign subsidiary, etc. of the consolidated corporation as well as any other documents specified by Order of the Ministry of Finance, to its consolidated tax return (meaning a consolidated tax return prescribed in Article 2, item (xxxii) of the Corporation Tax Act; the same applies in the following paragraph) for the consolidated business year that includes the day on which two months have elapsed since the day following the last day of the relevant business year.

- (6) The provisions of paragraph (3) and paragraph (4) apply only where the consolidated corporation has attached, to its consolidated tax return, a document stating that these provisions apply, and the consolidated corporation or the consolidated parent corporation of the consolidated corporation has preserved the documents or any other materials that certify that these provisions apply.
- (7) Where a consolidated corporation holds, directly or indirectly, a beneficial right of a foreign trust (meaning a foreign investment trust prescribed in Article 2, paragraph (22) of the Act on Investment Trusts and Investment Corporations, which is similar to a specified investment trust prescribed in Article 68-3-3, paragraph (1); hereinafter the same applies in this paragraph), the trustee of the foreign trust is deemed to be a different person for each of the trust assets, etc. under the foreign trust (meaning assets and liabilities included in the trust property and profits and expenses attributed to the trust property; hereinafter the same applies in this paragraph) and the trustee's own assets, etc. (meaning the trustee's assets and liabilities as well as profits and expenses other than those included in the trust assets, etc. under the foreign trust), and the provisions of this Article (excluding paragraph (3), paragraph (4) and the preceding paragraph) to Article 68-93 are applied thereto.
- (8) The provisions of Article 4-6, paragraph (2) and Article 4-7 of the Corporation Tax Act apply mutatis mutandis in the case where the provisions of the preceding paragraph apply.

### **Subsection 3 Special Provisions on Taxation on the Income of the Specified Foreign Corporations of a Consolidated Corporation That Is a Specially-Related Shareholder**

(Inclusion in Gross Profits of the Retained Income of the Specified Foreign Corporations of a Consolidated Corporation That Are Specially-Related Shareholders)

Article 68-91 (1) Where a consolidated corporation listed in each item of paragraph (1) of the preceding Article is subject to the provisions of the paragraph, any part of the amount of foreign corporation tax (meaning foreign

corporation tax prescribed in Article 69, paragraph (1) of the Corporation Tax Act; the same applies in the following paragraph) to be imposed on the income of a specified foreign subsidiary, etc. of the consolidated corporation, which is calculated pursuant to the method specified by Cabinet Order as corresponding to the individually taxable retained income of the specified foreign subsidiary, etc. (up to the amount equivalent to the individually taxable retained income), pursuant to the provisions of Cabinet Order, be deemed to be the amount of individually creditable foreign corporation tax (meaning the amount of individually creditable corporation tax prescribed in Article 81-15, paragraph (1) of the Act; hereinafter the same applies in this Subsection) paid by the consolidated corporation, and the provisions of Article 81-15, paragraphs (1) to (7), paragraph (10) and paragraphs (15) through (17) are applied thereto. In this case, in paragraph (10) of the Article, the phrase "any part of the amount..., which is deemed to be payable by the consolidated corporation pursuant to the provisions of paragraph (8)" is deemed to be replaced with "any part of the amount..., which is deemed to be payable by the consolidated corporation pursuant to the provisions of paragraph (8) and any part of the amount of foreign corporation tax to be imposed on the income of a specified foreign subsidiary, etc. prescribed in Article 68-91, paragraph (1) of the Act on Special Measures Concerning Taxation (Credit for Foreign Tax on Individually Taxable Retained Income of Specified Foreign Subsidiaries, etc. of Consolidated Corporations), which is deemed to be payable by the consolidated corporation pursuant to the provisions of Article 68-91, paragraph (1) of the Act", the phrase "any part of the amount..., which is deemed to be payable by the consolidated corporation pursuant to the provisions of paragraph (8) of the Article" is deemed to be replaced with "any part of the amount..., which is deemed to be payable by the consolidated corporation pursuant to the provisions of paragraph (8) and any part of the amount of foreign corporation tax to be imposed on the income of a specified foreign subsidiary, etc. prescribed in Article 66-7, paragraph (1) of the Act (Credit for Foreign Tax on Taxable Retained Income of Specified Foreign Subsidiaries, etc. of Domestic Corporations), which is deemed to be payable by the consolidated corporation pursuant to the provisions of Article 66-7, paragraph (1) of the Act", and the phrase "paragraphs (1) through (3) of the Article" is deemed to be replaced with "Article 69, paragraphs (1) through (3)."

- (2) Where a domestic corporation is, in each business year (excluding a period that is included in a consolidated business year), subject to the provisions of paragraph (1) of Article 66-6 with respect to the amount equivalent to the taxable retained income prescribed in the paragraph of a specified foreign subsidiary, etc. prescribed in the paragraph that is the specified foreign subsidiary, etc. of the domestic corporation, if foreign corporation tax is

imposed on the income of the specified foreign subsidiary, etc. during the period of each consolidated business year beginning after the last day of the business year during which the domestic corporation has been subject to the provision, the taxable retained income of the specified foreign subsidiary, etc. is deemed to be the individually taxable retained income of a specified foreign subsidiary, etc. prescribed in the preceding paragraph, and the amount of the foreign corporation tax to be imposed on the income of a specified foreign subsidiary, etc. prescribed in paragraph (1) of the Article is deemed to be the amount of foreign corporation tax to be imposed on the income of a specified foreign subsidiary, etc. prescribed in the preceding paragraph respectively, and the provisions of the paragraph are applied thereto.

- (3) Where a consolidated corporation listed in each item of paragraph (1) of the preceding Article is subject to the provisions of the paragraph with respect to the amount equivalent to the individually taxable retained income of a specified foreign subsidiary, etc. that is subject to the provisions of the paragraph, and the consolidated corporation is also subject to the provisions of Article 81-15, paragraphs (1) through (3) of the Corporation Tax Act pursuant to the provisions of paragraph (1), the amount that is deemed to be the amount of individually creditable foreign corporation tax pursuant to the provisions of paragraph (1) is included in the amount of gross profits in the calculation of the amount of consolidated income of the consolidated corporation for the consolidated business year specified by Cabinet Order.

Article 68-92 (1) Where an event listed in item (i) or item (ii) has occurred with regard to a specified foreign subsidiary, etc. of a consolidated corporation that has been subject to the provisions of Article 68-90, paragraph (1), or where an event listed in item (iii) has occurred with regard to a foreign affiliate prescribed in Article 68-90, paragraph (2), item (i) (limited to a foreign affiliate that has received, from the specified foreign subsidiary, etc., payment of dividend of surplus, dividend of profit or distribution of surplus prescribed in Article 23, paragraph (1), item (i) of the Corporation Tax Act (hereinafter referred to in this paragraph as "dividend of surplus, etc.") (such payment includes the delivery listed in item (ii) of the amount specified in the item), which is specified by Cabinet Order; hereinafter the same applies in this paragraph) of the consolidated corporation, if the individually taxable retained income of the specified foreign subsidiary, etc. in each consolidated business year of the consolidated corporation that commenced within ten years before the first day of the consolidated business year that includes the day on which the relevant event has occurred (hereinafter referred to in this Article as "each consolidated business year within the preceding ten years"), contains any amount included in the amount of gross profits in the calculation of the amount

of the consolidated corporation's consolidated income for each consolidated business year within the preceding ten years pursuant to the provisions of Article 68-90, paragraph (1) (excluding any amount included in the amount of deductible expenses for each consolidated business year within the preceding ten years pursuant to the provisions of this paragraph; hereinafter referred to in this Article as "individually taxed amount of retained income" and the following Article), such individually taxed amount of retained income is included in the amount of deductible expenses in the calculation of the amount of the consolidated corporation's consolidated income for the consolidated business year that includes the day on which the relevant event has occurred, up to the amount equivalent to the amount calculated pursuant to the method specified by Cabinet Order as part of the amount specified by each of the following items for the type of event corresponding to the event that has occurred with regard to the specified foreign subsidiary, etc. or the foreign affiliated company, which is appropriated from the individually taxable retained income pertaining to the consolidated corporation:

- (i) payment of dividend of surplus, etc.: The amount of dividend of surplus, etc. to be paid;
  - (ii) delivery of money or any other assets by reason of the occurrence of any of the events listed in the items of Article 24, paragraph (1) of the Corporation Tax Act: The amount equivalent to the amount of revenue reserves which is to be decreased due to the delivery; or
  - (iii) payment of dividend of surplus, etc. to the consolidated corporation or delivery of money or any other assets to the to the consolidated corporation by reason of the occurrence of any of the events listed in the items of Article 24, paragraph (1) of the Corporation Tax Act: The amount equivalent to the amount of revenue reserves which is to be decreased due to the amount of dividend of surplus, etc. to be paid or the delivery.
- (2) Where a consolidated corporation has a business year that commenced within ten years before the first day of the consolidated business year that includes the day on which the event listed in any item of the preceding paragraph has occurred, which is not included in a consolidated business year, and has a taxed amount of retained income (meaning a taxed amount of retained income prescribed in Article 66-8, paragraph (1); hereinafter the same applies in this Article) for the business year that is not included in a consolidated business year, with regard to the application of the provisions of the preceding paragraph, such taxed amount of retained income is deemed to be an individually taxed amount of retained income for each consolidated business year within the preceding ten years which corresponds to the period of the business year.
- (3) Where a consolidated corporation has acquired, as a result of a qualified

merger, qualified company split, qualified capital contribution in kind or qualified post-formation acquisition of assets (hereinafter referred to in this paragraph as a "qualified merger, etc."), the transfer of the whole or part of the number of shares, etc. of a specified foreign subsidiary, etc. held through direct and/or indirect ownership prescribed in Article 66-6, paragraph (2), item (iii) (hereinafter referred to in this paragraph as the "number of shares, etc. held through direct and/or indirect ownership") by the merged corporation, the splitting corporation, the corporation making a capital contribution-in-kind or the corporation effecting a post-formation contribution of assets, with regard to the application of the provisions of paragraph (1) in the consolidated business year that includes the date of the qualified merger, etc. and each subsequent consolidated business year of the consolidated corporation, the amount specified in each of the following items for the category of qualified merger, etc. listed in the relevant item, pursuant to the provisions of Cabinet Order, be deemed to be the individually taxed amount of retained income of the consolidated corporation for each consolidated business year within the preceding ten years:

- (i) qualified merger: The individually taxed amount of retained income or taxed amount of retained income of the merged corporation involved in the qualified merger for each business year within ten years before the merger (meaning each consolidated business year or each business year that commenced within ten years before the date of the qualified merger);
- (ii) qualified company split by split-off: Any part of the individually taxed amount of retained income or taxed amount of retained income of the splitting corporation involved in the qualified company split by split-off for each business year within ten years before the company split (meaning each consolidated business year or each business year that commenced within ten years before the date of the qualified company split by split-off; the same applies in the following paragraph), which is calculated pursuant to the method specified by Cabinet Order as the amount of income corresponding to the number of shares, etc. of the specified foreign subsidiary, etc. transferred to and therefore held by the consolidated corporation through direct and/or indirect ownership as a result of the qualified company split by split-off, while taking into consideration the contents of the claim prescribed in Article 66-6, paragraph (1); or
- (iii) qualified company split by spin-off, qualified capital contribution in kind or qualified post-formation acquisition of assets (hereinafter referred to in this item as "qualified company split by spin-off, etc."): Any part of the individually taxed amount of retained income or taxed amount of retained income of the splitting corporation, corporation making a capital contribution in kind or corporation effecting a post-formation contribution of assets

involved in the qualified company split by spin-off, etc. for each business year within ten years before the company split, etc. (meaning each consolidated business year or each business year that commenced within ten years before the first day of the consolidated business year that includes the date of the qualified company split by spin-off, etc., or each business year or each consolidated business year that commenced within ten years before the first day of the business year that includes the date of the qualified company split by spin-off, etc.; the same applies in the following paragraph), which is calculated pursuant to the method specified by Cabinet Order as the amount of income corresponding to the number of shares, etc. of the specified foreign subsidiary, etc. transferred to and therefore held by the consolidated corporation through direct and/or indirect ownership as a result of the qualified company split by spin-off, while taking into consideration the contents of the claim prescribed in Article 66-6, paragraph (1).

- (4) Where the succeeding corporation in a company split, the corporation receiving capital contribution in kind or the corporation subject to a post-formation acquisition of assets (hereinafter referred to in this paragraph as the "succeeding corporation in a company split, etc.") involved in a qualified company split, qualified capital contribution in kind or qualified post-formation acquisition of assets (hereinafter referred to in this paragraph as a "qualified company split, etc.") is subject to the provisions of the preceding paragraph or Article 66-8, paragraph (3), with regard to the application of the provisions of paragraph (1) in the consolidated business year that includes the date of the qualified company split, etc. and each subsequent consolidated business year of the splitting corporation, the corporation making a capital contribution in kind or the corporation effecting a post-formation contribution of assets (hereinafter referred to in this paragraph as the "splitting corporation, etc.") involved in the qualified company split, etc., no part of the individually taxed amount of retained income of the splitting corporation, etc. for each business year within ten years before the company split or each business year within ten years before the company split, etc. is deemed to be the individually taxed amount of retained income of the succeeding corporation in a company split, etc. for each consolidated business year within the preceding ten years pursuant to the provisions of the preceding paragraph, or the taxed amount of retained income of the succeeding corporation in a company split, etc. for each business year within the preceding ten years (meaning each business year within the preceding ten years prescribed in paragraph (1) of the Article).
- (5) The provisions of paragraph (1) apply only where a consolidated corporation has filed a consolidated tax return prescribed in Article 2, paragraph (3), item (xxxii) of the Corporation Tax Act or a tax return prescribed in Article 2, paragraph (3), item (xxxii) of the Act for the earliest consolidated business year

or business year pertaining to the individually taxed amount of retained income respectively and each subsequent consolidated business year, with a written statement attached thereto regarding the individually taxed amount of retained income or taxed amount of retained income and any other matters specified by Order of the Ministry of Finance, and filed a consolidated tax return, etc. for the consolidated business year for which the consolidated corporation seeks the application of the provisions of Article 2, paragraph (3) of the Act, with an application made therein to seek the inclusion in deductible expenses of the amount to be included in the amount of deductible expenses pursuant to the provisions of Article 2, paragraph (3) of the Act and a written statement attached thereto regarding the calculation of the amount to be included in the amount of deductible expenses. In this case, the amount to be included in the amount of deductible expenses pursuant to the provisions of Article 2, paragraph (3) of the Act is limited to the amount to be included in the amount of deductible expenses based on the application.

(6) Even where a consolidated corporation has filed a consolidated tax return, etc. or a tax return prescribed in paragraph (1) without the application or written statement attached thereto as set forth in the preceding paragraph regarding the whole or part of the necessary matters including [1] the amount to be included in the amount of deductible expenses pursuant to paragraph (1), [2] the individually taxed amount of retained income or taxed amount of retained income and [3] any other matters specified by Order of the Ministry of Finance, the district director may, when they find any unavoidable reason for the consolidated corporation's failure to make a necessary application or attach a necessary written statement as set forth in the paragraph, apply the provisions of paragraph (1) to any amount for which the application or written statement has not been made or attached, only if such application and written statement are submitted.

(7) With regard to the application of the provisions of Article 81-13, paragraph (2) and paragraph (4) of the Corporation Tax Act, any amount included, pursuant to the provisions of paragraph (1), in the amount of deductible expenses of a consolidated corporation subject to the provisions of the paragraph is to be included in the amount of consolidated income, etc. prescribed in these provisions, and any necessary matters concerning the calculation of the amount of consolidated revenue reserves are specified by Cabinet Order.

Article 68-93 Matters concerning the determination as to whether or not a consolidated corporation falls under any of the categories of corporation listed in the items of Article 68-90, paragraph (1), the treatment of the part of the amount of individually creditable foreign corporation tax that is deemed to



have been paid by a consolidated corporation pursuant to the provisions of Article 68-91, paragraph (1), which pertains to the individually taxed amount of retained income included in the amount of deductible expenses in the calculation of the amount of consolidated income for each consolidated business year pursuant to the provisions of paragraph (1) of the preceding Article, and other necessary matters concerning the application of the provisions of the preceding three Articles are specified by Cabinet Order.

Article 68-93-6 (1) Where, between a specially-related shareholder, etc. (meaning a person who falls under the category of specified shareholder, etc. as well as an individual or a corporation with a special relationship thereto as specified by Cabinet Order; hereinafter the same applies in this Subsection) and a specially-related domestic corporation, there is a special relationship (meaning a relationship specified by Cabinet Order as a relationship whereby the specially-related shareholder, etc. indirectly holds shares or capital contributions that account for 80 percent or more of the total number or total amount of issued shares of or capital contributions to the specially-related domestic corporation (excluding the shares or capital contributions held by the corporation; hereinafter referred to in this paragraph as "issued shares, etc."), and a foreign corporation specified by Cabinet Order as acting as an intermediary between the specially-related shareholder, etc. and the specially-related domestic corporation by way of the holding of the issued shares, etc. (hereinafter referred to in this Subsection as an "affiliated foreign corporation"), which falls under the category of affiliated foreign corporation specified by Cabinet Order as a corporation whose tax burden to be imposed on its income earned in a state or territory where its head office or principal office is located is significantly lower than a tax burden to be imposed on the income of a corporation in Japan (hereinafter referred to in this Subsection as a "specified foreign corporation"), in each business year beginning on or after October 1, 2007, retains as part of the amount of undistributed income, pursuant to the provisions of Cabinet Order, any amount that is adjusted, with respect to the amount of undistributed income, based on the tax amount pertaining to the amount of undistributed income and the amount of dividend of surplus, etc. (meaning dividend of surplus, dividend of profit or distribution of surplus prescribed in Article 23, paragraph (1), item (i) of the Corporation Tax Act) (such adjusted amount hereinafter referred to in this Article as "eligible retained income"), the amount equivalent to the part of eligible retained income which is calculated pursuant to the method specified by Cabinet Order as the amount of income corresponding to the number of shares, etc. of the specified foreign corporation held by the consolidated corporation that is the specially-related shareholder, etc. through direct and/or indirect

ownership, while taking into consideration the contents of the claim prescribed in Article 66-9-6, paragraph (1) vested in such shares or capital contributions (such part of eligible retained income hereinafter referred to in this Subsection as "individually taxable retained income") is deemed to be the amount of profit of the consolidated corporation that is the specially-related shareholder, etc., and included in its gross profits in the calculation of the amount of its consolidated income for the consolidated business year that includes the day on which two months have elapsed since the day following the last day of the relevant business year.

(2) In this Subsection, the meanings of the terms listed in the following items are as prescribed respectively in those items:

(i) specified shareholder, etc.: A specified shareholder, etc. prescribed in Article 66-9-6, paragraph (2), item (i);

(ii) specially-related domestic corporation: A specially-related domestic corporation prescribed in Article 66-9-6, paragraph (2), item (ii);

(iii) amount of undistributed income: An amount adjusted, with respect to the amount of income of a specified foreign corporation in its settlement of accounts for each business year, pursuant to the method specified by Cabinet Order, based on the amount calculated in accordance with the standards specified by Cabinet Order in a manner equivalent to the manner for calculating the amount of income for each business year pursuant to the Corporation Tax Act and this Act, in terms of the amount of loss incurred in each of the business years that commenced within seven years before the first day of the relevant business year; and

(iv) number of shares, etc. held through direct and/or indirect ownership: The number of shares, etc. held through direct and/or indirect ownership prescribed in Article 66-9-6, paragraph (2), item (iv).

(3) With regard to the application of the provisions of paragraph (1) in the case where a specified foreign corporation of a consolidated corporation that is a specially-related shareholder, etc. (excluding a corporation engaged in, as its principal business, the holding of shares (including capital contributions) or bonds, the provision of industrial property rights or any other rights concerning technology, production methods involving special technology or any other equivalent rights or methods (including the right to use these rights) or copyrights (including rights of publication, neighboring rights and any other equivalent rights) or the lending of vessels or aircrafts) has an office, store, factory or any other fixed facility that is considered to be necessary for conducting its principal business in the state or territory where its head office or principal office is located, and takes charge of managing, controlling and operating the business by itself (referred to in the following paragraph as the "case where a specified foreign corporation has a fixed facility"), the phrase

"amount that is adjusted" in the paragraph is deemed to be replaced with "amount that is adjusted,..., after deducting therefrom the amount equivalent to ten percent of the amount of expense specified by Cabinet Order as a personnel expense for people engaged in the business at the specified foreign corporation."

- (4) Where a specified foreign corporation prescribed in the preceding paragraph that is the specified foreign corporation of a consolidated corporation that is a specially-related shareholder, etc. has a fixed facility in the state or territory where its head office or principal office is located, and falls under any of the cases listed in the following items depending on the type of business listed in the following items to which its principal business corresponds in each business year, the provisions of paragraph (1) and the preceding paragraph does not apply to the eligible retained income of the specified foreign corporation for the relevant business year:
- (i) wholesale business, banking business, trust business, financial instruments business, insurance business, water transportation business or air transportation business: The case specified by Cabinet Order in which the specified foreign corporation conducts business mainly with a person other than [1] a specially-related domestic corporation of the specified foreign corporation, [2] a specially-related shareholder, etc. or [3] any other person specified by Cabinet Order as being equivalent to the persons mentioned in [1] or [2]; or
  - (ii) business other than those listed in the preceding item: The case specified by Cabinet Order in which the specified foreign corporation conducts business mainly in the state or territory where its head office or principal office is located (including the water areas belonging to the state or territory which are specified by Cabinet Order prescribed in Article 66-6, paragraph (4), item (ii)).
- (5) The consolidated parent corporation of a consolidated corporation that is a specially-related shareholder, etc. must attach a balance sheet and profit and loss statement for each business year regarding the specified foreign corporation of the consolidated corporation as well as any other documents specified by Order of the Ministry of Finance, to its consolidated tax return (meaning a consolidated tax return prescribed in Article 2, item (xxxii) of the Corporation Tax Act; the same applies in the following paragraph) for the consolidated business year that includes the day on which two months have elapsed since the day following the last day of the relevant business year.
- (6) The provisions of paragraph (3) and paragraph (4) apply only where the consolidated corporation has attached, to its consolidated tax return, a document stating that these provisions apply, and the consolidated corporation that is a specially-related shareholder, etc. or the consolidated parent

corporation of the consolidated corporation has preserved the documents or any other materials that certify that these provisions apply.

- (7) The provisions of paragraph (1) do not apply where an affiliated foreign corporation of a consolidated corporation that is a specially-related shareholder, etc. falls under the category of foreign affiliate prescribed in Article 68-90, paragraph (2), item (i) and the consolidated corporation that is a specially-related shareholder, etc. falls under the category of consolidated corporation listed in each item of Article 68-90, paragraph (1).
- (8) Where a consolidated corporation that is a specially-related shareholder, etc. holds, directly or indirectly, a beneficial right of a foreign trust (meaning a foreign investment trust prescribed in Article 2, paragraph (22) of the Act on Investment Trusts and Investment Corporations, which is similar to a specified investment trust prescribed in Article 68-3-3, paragraph (1); hereinafter the same applies in this paragraph), the trustee of the foreign trust is deemed to be a different person for each of the trust assets, etc. under the foreign trust (meaning assets and liabilities included in the trust property and profits and expenses attributed to the trust property; hereinafter the same applies in this paragraph) and the trustee's own assets, etc. (meaning the trustee's assets and liabilities as well as profits and expenses other than those included in the trust assets, etc. under the foreign trust), and the provisions of this Article (excluding paragraph (3), paragraph (4) and paragraph (6)) through Article 68-93-9 are applied thereto.
- (9) The provisions of Article 4-6, paragraph (2) and Article 4-7 of the Corporation Tax Act apply mutatis mutandis in the case where the provisions of the preceding paragraph apply.

Article 68-93-7 (1) Where a consolidated corporation that is a specially-related shareholder, etc. is subject to the provisions of paragraph (1) of the preceding Article, any part of the amount of foreign corporation tax (meaning foreign corporation tax prescribed in Article 69, paragraph (1) of the Corporation Tax Act; the same applies in the following paragraph) to be imposed on the income of a specified foreign corporation of the consolidated corporation, which is calculated pursuant to the method specified by Cabinet Order as corresponding to the individually taxable retained income of the specified foreign corporation (up to the amount equivalent to the individually taxable retained income), pursuant to the provisions of Cabinet Order, is deemed to be the amount of individually creditable foreign corporation tax (meaning the amount of individually creditable corporation tax prescribed in Article 81-15, paragraph (1) of the Act; hereinafter the same applies in this Subsection) paid by the consolidated corporation, and the provisions of Article 81-15, paragraphs (1) to (7), paragraph (10) and paragraphs (15) through (17) are applied thereto. In

this case, in paragraph (10) of the Article, the phrase "any part of the amount..., which is deemed to be payable by the consolidated corporation pursuant to the provisions of paragraph (8)" is deemed to be replaced with "any part of the amount..., which is deemed to be payable by the consolidated corporation pursuant to the provisions of paragraph (8) and any part of the amount of foreign corporation tax to be imposed on the income of a specified foreign corporation prescribed in Article 68-93-7, paragraph (1) of the Act on Special Measures Concerning Taxation (Credit for Foreign Tax on Individually Taxable Retained Income of Specified Foreign Corporations), which is deemed to be payable by the consolidated corporation pursuant to the provisions of Article 68-93-7, paragraph (1) of the Act", the phrase "any part of the amount..., which is deemed to be payable by the consolidated corporation pursuant to the provisions of paragraph (8) of the Article" is deemed to be replaced with "any part of the amount..., which is deemed to be payable by the consolidated corporation pursuant to the provisions of paragraph (8) and any part of the amount of foreign corporation tax to be imposed on the income of a specified foreign corporation prescribed in Article 66-9-7, paragraph (1) of the Act (Credit for Foreign Tax on Taxable Retained Income of Specified Foreign Corporations), which is deemed to be payable by the consolidated corporation pursuant to the provisions of Article 66-9-7, paragraph (1) of the Act", and the phrase "paragraphs (1) through (3) of the Article" is deemed to be replaced with "Article 69, paragraphs (1) through (3)."

- (2) Where a domestic corporation that is a specially-related shareholder, etc. is, in each business year (excluding a period that is included in a consolidated business year), subject to the provisions of paragraph (1) of Article 66-9-6 with respect to the amount equivalent to the taxable retained income prescribed in the paragraph of a specified foreign corporation prescribed in the paragraph that is the specified foreign corporation of the domestic corporation, if foreign corporation tax is imposed on the income of the specified foreign corporation during the period of each consolidated business year beginning after the last day of the business year during which the domestic corporation has been subject to the provision, the taxable retained income of the specified foreign corporation is deemed to be the individually taxable retained income of a specified foreign corporation prescribed in the preceding paragraph, and the amount of the foreign corporation tax to be imposed on the income of a specified foreign corporation prescribed in paragraph (1) of the Article is deemed to be the amount of foreign corporation tax to be imposed on the income of a specified foreign corporation prescribed in the preceding paragraph respectively, and the provisions of the paragraph are applied thereto.
- (3) Where a consolidated corporation that is a specially-related shareholder, etc. is subject to the provisions of paragraph (1) of the preceding Article with

respect to the amount equivalent to the individually taxable retained income of a specified foreign corporation that is subject to the provisions of the paragraph, and the consolidated corporation is also subject to the provisions of Article 81-15, paragraphs (1) through (3) of the Corporation Tax Act pursuant to the provisions of paragraph (1), the amount that is deemed to be the amount of individually creditable foreign corporation tax pursuant to the provisions of paragraph (1) is included in the amount of gross profits in the calculation of the amount of consolidated income of the consolidated corporation for the consolidated business year specified by Cabinet Order.

Article 68-93-8 (1) Where an event listed in item (i) or item (ii) has occurred with regard to a specified foreign corporation of a consolidated corporation that has been subject to the provisions of Article 68-93-6, paragraph (1), or where an event listed in item (iii) has occurred with regard to an affiliated foreign corporation (limited to an affiliated foreign corporation that has received, from the specified foreign corporation, payment of dividend of surplus, dividend of profit or distribution of surplus prescribed in Article 23, paragraph (1), item (i) of the Corporation Tax Act (hereinafter referred to in this paragraph as "dividend of surplus, etc.") (such payment includes the delivery listed in item (ii) of the amount specified in the item), which is specified by Cabinet Order; hereinafter the same applies in this paragraph) of the consolidated corporation, if the individually taxable retained income of the specified foreign corporation in each consolidated business year of the consolidated corporation that commenced within ten years before the first day of the consolidated business year that includes the day on which the relevant event has occurred (hereinafter referred to in this Article as "each consolidated business year within the preceding ten years"), contains any amount included in the amount of gross profits in the calculation of the amount of the consolidated corporation's consolidated income for each consolidated business year within the preceding ten years pursuant to the provisions of Article 68-93-6, paragraph (1) (excluding any amount included in the amount of deductible expenses for each consolidated business year within the preceding ten years pursuant to the provisions of this paragraph; hereinafter referred to in this Article and the following Article as "individually taxed amount of retained income"), such individually taxed amount of retained income is included in the amount of deductible expenses in the calculation of the amount of the consolidated corporation's consolidated income for the consolidated business year that includes the day on which the relevant event has occurred, up to the amount equivalent to the amount calculated pursuant to the method specified by Cabinet Order as part of the amount specified by each of the following items for the type of event corresponding to the event that has occurred with regard

to the specified foreign corporation or the foreign affiliated corporation, which is appropriated from the individually taxable retained income pertaining to the consolidated corporation:

- (i) payment of dividend of surplus, etc.: The amount of dividend of surplus, etc. to be paid;
  - (ii) delivery of money or any other assets by reason of the occurrence of any of the events listed in the items of Article 24, paragraph (1) of the Corporation Tax Act: The amount equivalent to the amount of revenue reserves which is to be decreased due to the delivery; or
  - (iii) payment of dividend of surplus, etc. to the consolidated corporation or delivery of money or any other assets to the consolidated corporation by reason of the occurrence of any of the events listed in the items of Article 24, paragraph (1) of the Corporation Tax Act: The amount equivalent to the amount of revenue reserves which is to be decreased due to the amount of dividend of surplus, etc. to be paid or the delivery.
- (2) Where a consolidated corporation that is a specially-related shareholder, etc. has a business year that commenced within ten years before the first day of the consolidated business year that includes the day on which the event listed in any item of the preceding paragraph has occurred, which is not included in a consolidated business year, and has a taxed amount of retained income (meaning a taxed amount of retained income prescribed in Article 66-9-8, paragraph (1); hereinafter the same applies in this paragraph) for the business year that is not included in a consolidated business year, with regard to the application of the provisions of the preceding paragraph, such taxed amount of retained income is deemed to be an individually taxed amount of retained income for each consolidated business year within the preceding ten years which corresponds to the period of the business year.
- (3) The provisions of Article 68-92, paragraphs (3) through (6) apply mutatis mutandis in the case where the provisions of paragraph (1) apply. In this case, each term or phrase listed in the middle column of the table below that appears in the provisions listed in the left column of the same table is deemed to be replaced with the corresponding term or phrase listed in the right column of the same table.

Article 68-92, paragraph (3)	consolidated corporation has acquired, as a result of a qualified merger	consolidated corporation that is the specially-related shareholder, etc. prescribed in Article 68-93-6, paragraph (1) (hereinafter referred to in this paragraph as a "specially-related shareholder, etc.") of a specially-related domestic corporation prescribed in Article 68-93-6, paragraph (2), item (ii) (hereinafter referred to in this paragraph as a "specially-related domestic corporation") has acquired, as a result of a qualified merger
	by the merged corporation...or the corporation effecting a post-formation acquisition of assets and/or liabilities	by the merged corporation...or the corporation effecting a post-formation acquisition of assets and/or liabilities that is the specially-related shareholder, etc. of said specially-related domestic corporation
	of a specified foreign subsidiary, etc. held through direct and/or indirect ownership prescribed in Article 66-6, paragraph (2), item (iii)	of a specified foreign corporation prescribed in paragraph (1) of the Article (hereinafter referred to in this paragraph as a "specified foreign corporation") held through direct and/or indirect ownership prescribed in paragraph (2), item (iv) of the said Article
	of paragraph (1)	of Article 68-93-8, paragraph (1)
	deemed to be the individually taxed amount of retained income	deemed to be the individually taxed amount of retained income (meaning the individually taxed amount of retained income prescribed in the paragraph [Article 68-93-8, paragraph (1)]; hereinafter the same applies through to paragraph (6))
Article 68-92, paragraph (3), item (i)	or taxed amount of retained income	or taxed amount of retained income (meaning the taxed amount of retained income prescribed in Article 66-9-8, paragraph (1); hereinafter the same applies through to paragraph (6))
Article 68-92, paragraph (3), item (ii) and item (iii)	specified foreign subsidiary, etc.	specified foreign corporation
	Article 66-6, paragraph (1)	Article 66-9-6, paragraph (1)



Article 68-92, paragraph (4)	preceding paragraph or Article 66-8, paragraph (3)	preceding paragraph as applied mutatis mutandis pursuant to Article 68-93-8, paragraph (3), or Article 66-8, paragraph (3) as applied mutatis mutandis pursuant to Article 66-9-8, paragraph (3)
	of paragraph (1)	of Article 68-93-8, paragraph (1)
	of the preceding paragraph	of the preceding paragraph as applied mutatis mutandis pursuant to paragraph (3) of the Article
	paragraph (3) of the Article	Article 66-8, paragraph (3) as applied mutatis mutandis pursuant to Article 66-9-8, paragraph (3)
	paragraph (1) of the Article	Article 66-9-8, paragraph (1)
Article 68-92, paragraph (5)	paragraph (1)	Article 68-93-8, paragraph (1)
Article 68-92, paragraph (6)	paragraph (1)	Article 68-93-8, paragraph (1)
	preceding paragraph	preceding paragraph as applied mutatis mutandis pursuant to paragraph (3) of the Article

(4) The provisions of Article 68-92, paragraph (7) apply mutatis mutandis to the amount included, pursuant to the provisions of paragraph (1), in the amount of deductible expenses of a consolidated corporation that is a specially-related shareholder, etc. subject to the provisions of the paragraph.

Article 68-93-9 Matters concerning the determination as to whether or not there is a specified relationship prescribed in Article 68-93-6, paragraph (1) between a specially-related shareholder, etc. and a specially-related domestic corporation, the treatment of the part of the amount of individually creditable foreign corporation tax that is deemed to have been paid by a consolidated corporation that is a specially-related shareholder, etc. pursuant to the provisions of Article 68-93-7, paragraph (1), which pertains to the individually taxed amount of retained income included in the amount of deductible expenses in the calculation of the amount of consolidated income for each consolidated business year pursuant to the provisions of paragraph (1) of the preceding Article, and other necessary matters concerning the application of the provisions of the preceding three Articles are specified by Cabinet Order.