

# **Order for Enforcement of the Act on Special Measures Concerning Taxation (Limited to the provisions related to nonresidents and foreign corporations)**

(Cabinet Order No. 43 of March 31, 1957)

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

### **Section 1 Special Provisions for Interest Income and Dividend Income**

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

Article 3 (1) The amount calculated as specified by Cabinet Order prescribed in Article 5-2, paragraph (1) and paragraph (3) of the Act is the amount specified respectively in the following items for the category of cases listed in the relevant items:

- (i) where the first day of the holding period prescribed in Article 5-2, paragraph (1) of the Act (hereinafter referred to as the "Holding Period" in this Article) for Book-Entry National Government Bonds prescribed in the same paragraph (hereinafter referred to as "Book-Entry National Government Bonds" in this Article) held by a nonresident or foreign corporation falls on or before the first day of the accounting period for interest on the Book-Entry National Government Bonds: The amount of interest for the accounting period;
- (ii) where the first day of the Holding Period for Book-Entry National Government Bonds held by a nonresident or foreign corporation falls after the first day of the accounting period for interest on the Book-Entry National Government Bonds: The amount calculated by multiplying the amount of interest for the accounting period by the number of days in the Holding Period and then dividing the result by the number of days in the accounting period;
- (iii) where the first day of the Holding Period for book-entry local government bonds prescribed in Article 5-2, paragraph (1) of the Act (hereinafter referred to as "Book-Entry Local Government Bonds" in this Article) held by a nonresident or foreign corporation falls on or before the first day of the accounting period for interest on the Book-Entry Local Government Bonds: The amount of interest for the accounting period;
- (iv) where the first day of the Holding Period for Book-Entry Local Government Bonds held by a nonresident or foreign corporation falls after the first day of the accounting period for interest on the Book-Entry Local Government

Bonds: The amount calculated by multiplying the amount of interest for the accounting period by the number of days in the Holding Period and then dividing the result by the number of days in the accounting period.

- (2) Where a nonresident or foreign corporation that is the trustee of a qualified foreign securities investment trust prescribed in Article 5-2, paragraph (2) of the Act (hereinafter referred to as a "Qualified Foreign Securities Investment Trust" in this Article) seeks the application of the provisions of Article 5-2, paragraph (1) of the Act with respect to interest on Book-Entry National Government Bonds or Book-Entry Local Government Bonds to be received thereby for the trust property under the Qualified Foreign Securities Investment Trust, the nonresident or foreign corporation is to submit, for each Qualified Foreign Securities Investment Trust accepted thereby, a written application for tax exemption of Book-Entry National Government Bonds prescribed in Article 5-2, paragraph (1), item (i), (a) of the Act (hereinafter referred to as a "Written Application for Tax Exemption of Book-Entry National Government Bonds" in this Article) and a statement of the Holding Period of Book-Entry National Government Bonds prescribed in Article 5-2, paragraph (1), item (i), (b) of the Act (referred to as a "Statement of the Holding Period of Book-Entry National Government Bonds" in paragraphs (7) to (9)), or a Written Application for Tax Exemption of Book-Entry Local Government Bonds prescribed in Article 5-2, paragraph (1), item (ii), (a) of the Act (hereinafter referred to as a "Written Application for Tax Exemption of Book-Entry Local Government Bonds" in this Article) and a statement of the Holding Period of Book-Entry Local Government Bonds prescribed in Article 5-2, paragraph (1), item (ii), (b) of the Act (referred to as a "Statement of the Holding Period of Book-Entry Local Government Bonds" in paragraph (7), paragraph (8) and paragraph (11)), to the district director of the tax office prescribed in Article 5-2, paragraph (1), item (i), (a) of the Act pursuant to the provisions of Article 5-2, paragraph (1), item (i), (a) and (b) of the Act, or the district director of the tax office prescribed in Article 5-2, paragraph (1), item (ii), (a) of the Act pursuant to the provisions of Article 5-2, paragraph (1), item (ii), (a) and (b) of the Act.
- (3) Where a nonresident or foreign corporation makes, for the first time, entries or records under the book-entry system (meaning entries or records under the book-entry system prescribed in Article 5-2, paragraph (5), item (vi) of the Act; hereinafter the same applies in this Article) with regard to Book-Entry National Government Bonds (limited to those bearing interest; hereinafter referred to as "Interest-Bearing Book-Entry National Government Bonds" in this paragraph, paragraph (5) and paragraph (22)) in the account listed respectively in the following items, if the person specified in the relevant items for the category of accounts listed in the relevant items has, when the entries

or records under the book-entry system are made, prepared a document containing the name of the nonresident or foreign corporation and their or its address as prescribed in Article 5-2, paragraph (1), item (i), (a) of the Act (hereinafter referred to as "Address" in this paragraph, paragraph (5) and paragraph (22)) and any other particulars specified by Ministry of Finance Order (hereinafter referred to as a "Document on Special Measures for Book-Entry National Government Bonds" in this paragraph and the following paragraph) and submitted the Document on Special Measures for Book-Entry National Government Bonds to the district director of the tax office prescribed in Article 5-2, paragraph (1), item (i), (a) of the Act (in the case where the specified book-entry institution, etc. (meaning a specified book-entry institution, etc. prescribed in paragraph (1) of the same Article; hereinafter the same applies in this Article) pertaining to the person specified in the relevant items is a Specified Account Management Institution prescribed in Article 5-2, paragraph (5), item (ii) of the Act (hereinafter referred to as a "Specified Account Management Institution" in this Article), if the person has submitted the relevant document to the district director of the tax office via a specified book-entry institution prescribed in paragraph (5), item (i) of the same Article (hereinafter referred to as a "Specified Book-Entry Institution" in this Article); in the case where the Specified Book-Entry Institution, etc. pertaining to the person specified in the relevant items is a Specified Indirect Account Management Institution prescribed in paragraph (5), item (iii) of the same Article (hereinafter referred to as a "Specified Indirect Account Management Institution" in this Article), if the person has submitted the relevant document to the district director of the tax office via [1] the Specified Account Management Institution pertaining to the entries or records under the book-entry system regarding the Interest-Bearing Book-Entry National Government Bonds (in the case where the Specified Book-Entry Institution, etc. pertaining to the person specified in the relevant items makes entries or records under the book-entry system regarding the Interest-Bearing Book-Entry National Government Bonds through any other Specified Indirect Account Management Institution, via the relevant other Specified Indirect Account Management Institution and the Specified Account Management Institution pertaining to the entries or records under the book-entry system regarding the Interest-Bearing Book-Entry National Government Bonds) and [2] a Specified Book-Entry Institution), the nonresident or foreign corporation is deemed to have submitted a Written Application for Tax Exemption of Book-Entry National Government Bonds pursuant to the provisions of Article 5-2, paragraph (1), item (i), (a) of the Act with respect to the Interest-Bearing Book-Entry National Government Bonds; provided, however, that this does not apply where the name and Address to be entered in the Document on Special Measures for

Book-Entry National Government Bonds are inconsistent with the name and Address of the nonresident or foreign corporation for which a confirmation has been provided pursuant to the provisions of paragraph (9) of the same Article (including the cases where it is applied mutatis mutandis pursuant to paragraph (12) of the same Article) with respect to Book-Entry Local Government Bonds (hereinafter referred to as a "Confirmation Concerning Book-Entry Local Government Bonds" in this paragraph, the following paragraph and paragraph (22)) or a confirmation has been provided pursuant to the provisions of Article 41-12, paragraph (12) of the Act with respect to short-term national government bonds, etc. (meaning national government bonds listed in paragraph (9), items (i) to (viii) of the same Article that fall under the category of specified short-term government or company bonds prescribed in the same paragraph, and principal-only Book-Entry National Government Bonds and coupon-only Book-Entry National Government Bonds prescribed in paragraph (12) of the same Article) (including a confirmation provided pursuant to the provisions of Article 26-18, paragraph (6); hereinafter referred to as a "Confirmation Concerning Short-Term National Government Bonds, etc." in this Article):

- (i) an account pertaining to the entries or records under the book-entry system covered by a Confirmation Concerning Book-Entry Local Government Bonds: The head of the Business Office, etc. prescribed in Article 5-2, paragraph (1) of the Act (hereinafter referred to as the "Business Office, etc." through to paragraph (8)) of the Specified Book-Entry Institution, etc. that provides a Confirmation Concerning the Book-Entry Local Government Bonds, or the head of the Business Office, etc. of the Specified Book-Entry Institution, etc. that has received a notice pursuant to the provisions of Article 5-2, paragraph (14) of the Act from the head of the Specified Overseas Business Office, etc. prescribed in paragraph (5), item (v) of the same Article (hereinafter referred to as the "Specified Overseas Business Office, etc." through to paragraph (7)) of the Qualified Foreign Intermediary prescribed in item (iv) of the same paragraph (hereinafter referred to as the "Qualified Foreign Intermediary" in this Article) that provides a Confirmation Concerning the Book-Entry Local Government Bonds;
- (ii) an account pertaining to the entries or records under the book-entry system covered by a Confirmation Concerning Short-Term National Government Bonds, etc.: The head of the Business Office, etc. of the Specified Book-Entry Institution, etc. that provides a confirmation concerning the short-term national government bonds, or the head of the Business Office, etc. of the Specified Book-Entry Institution, etc. that has received a document prescribed in paragraph (14) of Article 41-12 of the Act pursuant to the provisions of the same paragraph from the head of the Specified Overseas

Business Office, etc. of the Qualified Foreign Intermediary that provides a confirmation concerning the short-term national government bonds.

- (4) In the case referred to in the preceding paragraph, the head of the Business Office, etc. of the Specified Book-Entry Institution, etc. who has submitted a Document on Special Measures for Book-Entry National Government Bonds pursuant to the provisions of the same paragraph must, without delay after the date of the submission, give a notice of the submission of the Document on Special Measures for Book-Entry National Government Bonds to the nonresident or foreign corporation that is to be deemed to have submitted a Written Application for Tax Exemption of Book-Entry National Government Bonds pursuant to the provisions of the same paragraph (in the case where a Confirmation Concerning Book-Entry Local Government Bonds or a Confirmation Concerning Short-Term National Government Bonds, etc. with regard to the nonresident or foreign corporation is provided by the head of a Specified Overseas Business Office, etc. of a Qualified Foreign Intermediary, notice must be given to the nonresident or foreign corporation via the head of the Specified Overseas Business Office, etc.).
- (5) Where a nonresident or foreign corporation makes, for the first time, entries or records under the book-entry system with regard to Book-Entry Local Government Bonds in an account listed respectively in the following items, if the person specified in the relevant items for the category of accounts listed in the relevant items has, when the entries or records under the book-entry system are made, prepared a document containing the name of the nonresident or foreign corporation and their or its Address and any other particulars specified by Ministry of Finance Order (hereinafter referred to as a "Document on Special Measures for Book-Entry Local Government Bonds" in this paragraph and the following paragraph) and submitted the Document on Special Measures for Book-Entry Local Government Bonds to the district director of the tax office prescribed in Article 5-2, paragraph (1), item (ii), (a) of the Act via the person who pays interest on the Book-Entry Local Government Bonds (in the case where the Specified Book-Entry Institution, etc. pertaining to the person specified in the relevant items is a Specified Account Management Institution, if the person has submitted the relevant document to the district director of the tax office via a Specified Book-Entry Institution and the person who pays the interest; in the case where the Specified Book-Entry Institution, etc. pertaining to the person specified in the relevant items is a Specified Indirect Account Management Institution, if the person has submitted the relevant document to the district director of the tax office via [1] the Specified Account Management Institution pertaining to the entries or records under the book-entry system regarding the Interest-Bearing Book-Entry Local Government Bonds (in the case where the Specified Book-Entry

Institution, etc. pertaining to the person specified in the relevant items makes entries or records under the book-entry system regarding the Interest-Bearing Book-Entry Local Government Bonds through any other Specified Indirect Account Management Institution, via the relevant other Specified Indirect Account Management Institution and the Specified Account Management Institution pertaining to the entries or records under the book-entry system regarding the Interest-Bearing Book-Entry Local Government Bonds), [2] a Specified Book-Entry Institution, and [3] the person who pays the interest), the nonresident or foreign corporation is deemed to have submitted a Written Application for Tax Exemption of Book-Entry Local Government Bonds pursuant to the provisions of Article 5-2, paragraph (1), item (ii), (a) of the Act with respect to the Interest-Bearing Book-Entry Local Government Bonds; provided, however, that this does not apply where the name and Address to be entered in the Document on Special Measures for Book-Entry Local Government Bonds are inconsistent with the name and Address of the nonresident or foreign corporation for which a confirmation has been provided pursuant to the provisions of paragraph (9) of the same Article (including the cases where it is applied mutatis mutandis pursuant to paragraph (12) of the same Article; hereinafter the same applies in this paragraph) with respect to other Book-Entry Local Government Bonds (hereinafter referred to as a "Confirmation Concerning Other Book-Entry Local Government Bonds" in this paragraph, the following paragraph and paragraph (23)), a confirmation has been provided pursuant to the provisions of paragraph (9) of the same Article with respect to Interest-Bearing Book-Entry National Government Bonds (hereinafter referred to as a "Confirmation Concerning Interest-Bearing Book-Entry National Government Bonds" in this paragraph, the following paragraph and paragraph (23)) or a Confirmation Concerning Short-Term National Government Bonds, etc. has been provided:

- (i) an account pertaining to the entries or records under the book-entry system covered by a Confirmation Concerning Other Book-Entry Local Government Bonds: The head of the Business Office, etc. of the Specified Book-Entry Institution, etc. that provides a confirmation concerning the relevant other Book-Entry Local Government Bonds, or the head of the Business Office, etc. of the Specified Book-Entry Institution, etc. that has received a notice pursuant to the provisions of Article 5-2, paragraph (14) of the Act from the head of the Specified Overseas Business Office, etc. of the Qualified Foreign Intermediary that provides a confirmation concerning the relevant Other Book-Entry Local Government Bonds;
- (ii) an account pertaining to the entries or records under the book-entry system covered by a Confirmation Concerning Interest-Bearing Book-Entry National Government Bonds: The head of the Business Office, etc. of the Specified

Book-Entry Institution, etc. that provides a Confirmation Concerning the Interest-Bearing Book-Entry National Government Bonds, or the head of the Business Office, etc. of the Specified Book-Entry Institution, etc. that has received a notice pursuant to the provisions of Article 5-2, paragraph (14) of the Act from the head of the Specified Overseas Business Office, etc. of the Qualified Foreign Intermediary that provides a Confirmation Concerning the Interest-Bearing Book-Entry National Government Bonds;

- (iii) an account pertaining to the entries or records under the book-entry system covered by a Confirmation Concerning Short-Term National Government Bonds, etc.: The head of the Business Office, etc. of the Specified Book-Entry Institution, etc. that provides a confirmation concerning the short-term national government bonds, or the head of the Business Office, etc. of the Specified Book-Entry Institution, etc. that has received a document prescribed in paragraph (14) of Article 41-12 of the Act pursuant to the provisions of the same paragraph from the head of the Specified Overseas Business Office, etc. of the Qualified Foreign Intermediary that provides a confirmation concerning the short-term national government bonds.
- (6) In the case referred to in the preceding paragraph, the head of the Business Office, etc. of the Specified Book-Entry Institution, etc. who has submitted a Document on Special Measures for Book-Entry Local Government Bonds pursuant to the provisions of the same paragraph must, without delay after the date of the submission, give a notice of the submission of the Document on Special Measures for Book-Entry Local Government Bonds, to the nonresident or foreign corporation that is deemed to have submitted a Written Application for Tax Exemption of Book-Entry Local Government Bonds pursuant to the provisions of the same paragraph (in the case where a confirmation concerning other Book-Entry Local Government Bonds, a Confirmation Concerning Interest-Bearing Book-Entry National Government Bonds or a Confirmation Concerning Short-Term National Government Bonds, etc. with regard to the nonresident or foreign corporation is provided by the head of a Specified Overseas Business Office, etc. of a Qualified Foreign Intermediary, the notice must be given to the nonresident or foreign corporation via the head of the Specified Overseas Business Office, etc.).
- (7) The head of a Business Office, etc. of a Specified Book-Entry Institution, etc. or head of a Specified Overseas Business Office, etc. of a Qualified Foreign Intermediary must, where a statement of the Holding Period of Book-Entry National Government Bonds or statement of the Holding Period of Book-Entry Local Government Bonds has been submitted, confirm whether or not the Holding Period and other particulars specified by Ministry of Finance Order with regard to the Book-Entry National Government Bonds or Book-Entry Local Government Bonds entered in the statement of the Holding Period of

Book-Entry National Government Bonds or statement of the Holding Period of Book-Entry Local Government Bonds are consistent with the day on which entries or records under the book-entry system were made with regard to the Book-Entry National Government Bonds or Book-Entry Local Government Bonds and other particulars specified by Ministry of Finance Order as entered or recorded in the books prescribed in Article 5-2, paragraph (13) of the Act (referred to as the "books for book-entry" in paragraph (9), paragraph (11) and paragraph (24)).

- (8) Where a nonresident or foreign corporation submits a statement of the Holding Period of Book-Entry National Government Bonds or a statement of the Holding Period of Book-Entry Local Government Bonds via a Qualified Foreign Intermediary to the district director of the tax office set forth in Article 5-2, paragraph (1), item (i), (b) or item (ii), (b) of the Act (including the cases where a Qualified Foreign Intermediary submits the document set forth in the following paragraph pursuant to the provisions of the same paragraph as applied mutatis mutandis pursuant to paragraph (10)), the head of the Business Office, etc. of the Specified Book-Entry Institution, etc. that has received a notice set forth in paragraph (14) of the same Article pursuant to the provisions of the same paragraph must confirm whether or not the Holding Period and other particulars specified by Ministry of Finance Order with regard to the Book-Entry National Government Bonds or Book-Entry Local Government Bonds entered in the statement of the Holding Period of Book-Entry National Government Bonds or statement of the Holding Period of Book-Entry Local Government Bonds or the document are consistent with the day on which entries or records under the book-entry system were made with regard to the Book-Entry National Government Bonds or Book-Entry Local Government Bonds and other particulars specified by Ministry of Finance Order as entered or recorded in the books prescribed in the same paragraph.
- (9) Where a Specified Book-Entry Institution, etc. has, pursuant to the provisions of Article 5-2, paragraph (9) of the Act (including the cases where it is applied mutatis mutandis pursuant to paragraph (12) of the same Article), prepared and preserved a copy of a document prescribed in paragraph (9) of the same Article that has been presented thereto by a nonresident or foreign corporation, and the nonresident or foreign corporation receives payment of interest on the Book-Entry National Government Bonds for which they or it has made entries or records under the book-entry system through the Specified Book-Entry Institution, etc., if the Specified Book-Entry Institution, etc. has, no later than the day preceding the day on which the nonresident or foreign corporation is to receive payment of the interest, prepared a document containing the Holding Period and any other particulars specified by Ministry of Finance Order with regard to the Book-Entry National Government Bonds held by the nonresident



or foreign corporation based on the books for book-entry that the Specified Book-Entry Institution, etc. keeps, and submitted the document to the district director of the tax office set forth in paragraph (1), item (i), (b) of the same Article (in the case where the Specified Book-Entry Institution, etc. is a Specified Account Management Institution, if the Specified Book-Entry Institution, etc. has submitted the document to the district director of the tax office via a Specified Book-Entry Institution; in the case where the Specified Book-Entry Institution, etc. is a Specified Indirect Account Management Institution, if the Specified Book-Entry Institution, etc. has submitted the document to the district director of the tax office via [1] the Specified Account Management Institution pertaining to the entries or records under the book-entry system regarding the Book-Entry National Government Bonds (in the case where the Specified Book-Entry Institution, etc. makes entries or records under the book-entry system regarding the Book-Entry National Government Bonds through any other Specified Indirect Account Management Institution, via the relevant Other Specified Indirect Account Management Institution and Specified Account Management Institution pertaining to the entries or records under the book-entry system regarding the Book-Entry National Government Bonds) and [2] a Specified Book-Entry Institution), the nonresident or foreign corporation is deemed to have submitted a statement of the Holding Period of Book-Entry National Government Bonds pursuant to the provisions of item (i), (b) of the same paragraph with respect to the interest receivable thereby.

- (10) The provisions of the preceding paragraph apply mutatis mutandis where a nonresident or foreign corporation receives payment of interest on the Book-Entry National Government Bonds for which they or it has made entries or records under the book-entry system through a Qualified Foreign Intermediary. In this case, in the same paragraph, the term "to the district director of the tax office set forth in paragraph (1), item (i), (b) of the same Article" is deemed to be replaced with "to the district director of the tax office set forth in paragraph (1), item (i), (b) of the same Article via the Specified Book-Entry Institution, etc. pertaining to the entries or records under the book-entry system regarding the Book-Entry National Government Bonds"; the term "(in the case where the Specified Book-Entry Institution, etc. is a Specified Account Management Institution, if the Specified Book-Entry Institution, etc. has submitting the document to the district director of the tax office via a Specified Book-Entry Institution; in the case where the Specified Book-Entry Institution, etc. is a Specified Indirect Account Management Institution" is deemed to be replaced with "(in the case where the Specified Book-Entry Institution, etc. is a foreign further indirect account management institution prescribed in paragraph (5), item (vii) of the same Article (hereinafter referred to as a "Foreign Further Indirect Account Management Institution" in this paragraph"; the term "the

Specified Account Management Institution pertaining to the entries or records under the book-entry system regarding the Book-Entry National Government Bonds (" is deemed to be replaced with "the Foreign Indirect Account Management Institution prescribed in paragraph (5), item (viii) of the same Article (hereinafter referred to as "Foreign Indirect Account Management Institution" in this paragraph) pertaining to the entries or records under the book-entry system regarding the Book-Entry National Government Bonds ("; the term "any other Specified Indirect Account Management Institution" is deemed to be replaced with "any other Foreign Further Indirect Account Management Institution"; and the term "the Specified Account Management Institution pertaining to the entries or records under the book-entry system regarding the Book-Entry National Government Bonds) and [2] a Specified Book-Entry Institution" is deemed to be replaced with "the Foreign Indirect Account Management Institution pertaining to the entries or records under the book-entry system regarding the Book-Entry National Government Bonds) and [2] the Specified Book-Entry Institution, etc. pertaining to the entries or records under the book-entry system regarding the Book-Entry National Government Bonds".

- (11) Where a Specified Book-Entry Institution, etc. has, pursuant to the provisions of Article 5-2, paragraph (9) of the Act (including the cases where it is applied mutatis mutandis pursuant to paragraph (12) of the same Article), prepared and preserved a copy of a document prescribed in paragraph (9) of the same Article that has been presented thereto by a nonresident or foreign corporation, and the nonresident or foreign corporation receives payment of interest on the Book-Entry Local Government Bonds for which they or it has made entries or records under the book-entry system through the Specified Book-Entry Institution, etc., if the Specified Book-Entry Institution, etc. has, no later than the day preceding the day on which the nonresident or foreign corporation is to receive payment of the interest, prepared a document containing the Holding Period and any other particulars specified by Ministry of Finance Order with regard to the Book-Entry Local Government Bonds held by the nonresident or foreign corporation based on the books for book-entry that the Specified Book-Entry Institution, etc. keeps, and submitted the document to the district director of the tax office set forth in paragraph (1), item (ii), (b) of the same Article via the person who pays interest on the Book-Entry Local Government Bonds (in the case where the Specified Book-Entry Institution, etc. is a Specified Account Management Institution, if the Specified Book-Entry Institution, etc. has submitted the document to the district director of the tax office via a Specified Book-Entry Institution and the person who pays the interest; in the case where the Specified Book-Entry Institution, etc. is a Specified Indirect Account Management Institution, if the Specified Book-

Entry Institution, etc. has submitted the document to the district director of the tax office via [1] the Specified Account Management Institution pertaining to the entries or records under the book-entry system regarding the Book-Entry Local Government Bonds (in the case where the Specified Book-Entry Institution, etc. makes entries or records under the book-entry system regarding the Book-Entry Local Government Bonds through any other Specified Indirect Account Management Institution, via the relevant other Specified Indirect Account Management Institution and the Specified Account Management Institution pertaining to the entries or records under the book-entry system regarding the Book-Entry Local Government Bonds), [2] a Specified Book-Entry Institution, and [3] the person who pays the interest), the nonresident or foreign corporation is deemed to have submitted a statement of the Holding Period of Book-Entry Local Government Bonds pursuant to the provisions of item (ii), (b) of the same paragraph with respect to the interest receivable thereby.

- (12) The provisions of the preceding paragraph apply mutatis mutandis where a nonresident or foreign corporation receives payment of interest on the Book-Entry Local Government Bonds for which they or it has made entries or records under the book-entry system through a Qualified Foreign Intermediary. In this case, in the same paragraph, the term "via the person who pays interest on the Book-Entry Local Government Bonds" is deemed to be replaced with "via the Specified Book-Entry Institution, etc. pertaining to the entries or records under the book-entry system regarding the Book-Entry Local Government Bonds and the person who pays interest on the Book-Entry Local Government Bonds"; the term "(in the case where the Specified Book-Entry Institution, etc. is a Specified Account Management Institution, if the Specified Book-Entry Institution, etc. has submitted the document to the district director of the tax office via a Specified Book-Entry Institution and the person who pays the interest; in the case where the Specified Book-Entry Institution, etc. is a Specified Indirect Account Management Institution" is deemed to be replaced with "(in the case where the Specified Book-Entry Institution, etc. is a Foreign Further Indirect Account Management Institution prescribed in paragraph (5), item (vii) of the same Article (hereinafter referred to as a "Foreign Further Indirect Account Management Institution" in this paragraph"; the term "the Specified Account Management Institution pertaining to the entries or records under the book-entry system regarding the Book-Entry National Government Bonds (" is deemed to be replaced with "the Foreign Indirect Account Management Institution prescribed in paragraph (5), item (viii) of the same Article (hereinafter referred to as a "Foreign Indirect Account Management Institution" in this paragraph) pertaining to the entries or records under the book-entry system regarding the Book-Entry National Government Bonds (";

the term "any other Specified Indirect Account Management Institution" is deemed to be replaced with "any other Foreign Further Indirect Account Management Institution"; and the term "the Specified Account Management Institution pertaining to the entries or records under the book-entry system regarding the Book-Entry Local Government Bonds), [2] a Specified Book-Entry Institution" is deemed to be replaced with "the Foreign Indirect Account Management Institution pertaining to the entries or records under the book-entry system regarding the Book-Entry Local Government Bonds), [2] the Specified Book-Entry Institution pertaining to the entries or records under the book-entry system regarding the Book-Entry Local Government Bonds".

- (13) The interest specified by Cabinet Order prescribed in Article 5-2, paragraph (3) of the Act is the interest listed as follows:
- (i) interest to be received by a nonresident listed in Article 164, paragraph (1), item (i) of the Income Tax Act, which is attributed to a business that is conducted by the nonresident in Japan through a fixed place of business as prescribed in Article 164, paragraph (1), item (i) of the same Act;
  - (ii) interest to be received by a nonresident listed in Article 164, paragraph (1), item (ii) or item (iii) of the Income Tax Act, which is attributed to a business prescribed in these provisions that is conducted by the nonresident.
- (14) A person who intends to obtain the approval set forth in Article 5-2, paragraph (5), item (iv) of the Act must attach, to a document containing the person's name and the location of the person's head office or principal office and any other particulars specified by Ministry of Finance Order, a document in which a Specified Book-Entry Institution certifies that the person is a foreign account management institution prescribed in paragraph (5), item (vii) of the same Article and any other document specified by Ministry of Finance Order, and submit those documents, in the case of Book-Entry National Government Bonds, to the district director of the tax office prescribed in paragraph (1), item (i), (a) of the same Article via the Specified Book-Entry Institution pertaining to the Book-Entry National Government Bonds, or in the case of Book-Entry Local Government Bonds, to the district director of the tax office prescribed in item (ii), (a) of the same paragraph via the Specified Book-Entry Institution pertaining to the Book-Entry Local Government Bonds and the person who pays interest on the Book-Entry Local Government Bonds.
- (15) Where a written application set forth in the preceding paragraph has been submitted, the district director of the tax office, when making a disposition to approve or dismiss the application, gives a notice in writing to the person who has submitted the application to that effect.
- (16) Where a written application set forth in paragraph (14) has been submitted, if a disposition to approve or dismiss the application has not been made by the final day of the month following the month that includes the day on which the

written application was submitted, it is deemed that approval has been granted as of that day.

- (17) The district director of the tax office, when the district director makes a disposition to rescind approval pursuant to the provisions of Article 5-2, paragraph (7) of the Act, gives a notice in writing to the person who has obtained the approval to that effect.
- (18) With respect to the application of the provisions of paragraph (14) in the case where a person who intends to obtain the approval set forth in Article 5-2, paragraph (5), item (iv) of the Act with regard to Book-Entry National Government Bonds has already obtained the approval set forth in paragraph (5), item (iv) of the same Article with regard to Book-Entry Local Government Bonds, in paragraph (14), the term "a Specified Book-Entry Institution certifies" is deemed to be replaced with "the Specified Book-Entry Institution pertaining to Book-Entry National Government Bonds certifies"; the term "other particulars specified by Ministry of Finance Order" is deemed to be replaced with "and a document that certifies that the person has obtained the approval set forth in item (iv) of the same paragraph with regard to Book-Entry Local Government Bonds"; the term "submit those documents, in the case of Book-Entry National Government Bonds, to" is deemed to be replaced with "submit those documents to"; the term "to the district director of the tax office prescribed in paragraph (1), item (i), (a) of the same Article via the Specified Book-Entry Institution pertaining to the Book-Entry National Government Bonds, or in the case of Book-Entry Local Government Bonds, to the district director of the tax office prescribed in item (ii), (a) of the same paragraph via the Specified Book-Entry Institution pertaining to the Book-Entry Local Government Bonds and the person who pays interest on the Book-Entry Local Government Bonds" is deemed to be replaced with "to the district director of the tax office prescribed in paragraph (1), item (i), (a) of the same Article via the Specified Book-Entry Institution pertaining to the Book-Entry National Government Bonds". In this case, where the written application set forth in paragraph (14) has been submitted, it is deemed that the approval set forth in Article 5-2, paragraph (5), item (iv) of the Act has been granted at the time of the submission.
- (19) With respect to the application of the provisions of paragraph (14) in the case where a person who intends to obtain the approval set forth in Article 5-2, paragraph (5), item (iv) of the Act with regard to Book-Entry Local Government Bonds has already obtained the approval set forth in paragraph (5), item (iv) of the same Article with regard to Book-Entry National Government Bonds, in paragraph (14), the term "a Specified Book-Entry Institution certifies" is deemed to be replaced with "the Specified Book-Entry Institution pertaining to Book-Entry Local Government Bonds certifies"; the

term "other particulars specified by Ministry of Finance Order" is deemed to be replaced with "and a document that certifies that the person has obtained the approval set forth in paragraph (5), item (iv) of the same Article with regard to Book-Entry National Government Bonds"; the term "submit those documents, in the case of Book-Entry National Government Bonds, to the district director of the tax office prescribed in paragraph (1), item (i), (a) of the same Article via the Specified Book-Entry Institution pertaining to the Book-Entry National Government Bonds, or in the case of Book-Entry Local Government Bonds, to" is deemed to be replaced with "submit those documents to"; the term "item (ii), (a) of the same paragraph" is deemed to be replaced with "paragraph (1), item (ii), (a) of the same Article". In this case, where the written application set forth in paragraph (14) has been submitted, it is deemed that the approval set forth in Article 5-2, paragraph (5), item (iv) of the Act has been granted at the time of the submission.

- (20) With respect to the application of the provisions of paragraph (14) in the case where a person who intends to obtain the approval set forth in Article 5-2, paragraph (5), item (iv) of the Act with regard to Book-Entry Local Government Bonds has already obtained the approval set forth in paragraph (5), item (iv) of the same Article with regard to other Book-Entry Local Government Bonds, in paragraph (14), the term "a document in which a Specified Book-Entry Institution certifies that the person is a foreign account management institution prescribed in paragraph (5), item (vii) of the same Article and any other document specified by Ministry of Finance Order" is deemed to be replaced with "a document that certifies that the person has obtained the approval set forth in paragraph (5), item (iv) of the same Article with regard to other Book-Entry Local Government Bonds"; the term "submit those documents, in the case of Book-Entry National Government Bonds, to the district director of the tax office prescribed in paragraph (1), item (i), (a) of the same Article via the Specified Book-Entry Institution pertaining to the Book-Entry National Government Bonds, or in the case of Book-Entry Local Government Bonds, to" is deemed to be replaced with "submit those documents to"; the term "item (ii), (a) of the same paragraph" is deemed to be replaced with "paragraph (1), item (ii), (a) of the same Article". In this case, where the written application set forth in paragraph (14) has been submitted, it is deemed that the approval set forth in Article 5-2, paragraph (5), item (iv) of the Act has been granted at the time of the submission.
- (21) The document specified by Cabinet Order prescribed in Article 5-2, paragraph (9) of the Act is any of the documents specified respectively in the following items for the category of persons listed in the relevant items (in the case where the person listed in the relevant items is the trustee of a Qualified Foreign Securities Investment Trust, any of the documents specified in the

relevant items and the prospectus of the Qualified Foreign Securities Investment Trust or any other document similar thereto):

(i) nonresident: the nonresident's certificate of alien registration, receipt for national tax or local tax, certificate of tax payment or any other document specified by Ministry of Finance Order;

(ii) foreign corporation: the foreign corporation's certificate of registered particulars of the corporation, receipt for national tax or local tax, certificate of tax payment or any other document specified by Ministry of Finance Order.

(22) Where a nonresident or foreign corporation makes, for the first time, entries or records under the book-entry system regarding Interest-Bearing Book-Entry National Government Bonds in the account pertaining to the entries or records under the book-entry system covered by a Confirmation Concerning Book-Entry Local Government Bonds or the account pertaining to the entries or records under the book-entry system covered by a Confirmation Concerning Short-Term National Government Bonds, etc., or submits a written application prescribed in Article 5-2, paragraph (10) of the Act pursuant to the provisions of paragraph (10) of the same Article with regard to Interest-Bearing Book-Entry National Government Bonds (hereinafter referred to as a "Written Application for a Change of Book-Entry National Government Bonds" in this paragraph, paragraph (24) and paragraph (25)), in terms of the entries and records under the book-entry system or submission, the fact that the identification documents set forth Article 5-2, paragraph (9) of the Act (including the cases where it is applied mutatis mutandis pursuant to paragraph (12) of the same Article; hereinafter the same applies in this paragraph) have been presented pursuant to the provisions of paragraph (9) of the same Article with regard to a confirmation concerning Book-Entry Local Government Bonds or that the identification documents set forth in Article 41-12, paragraph (12) of the Act have been presented pursuant to the provisions of paragraph (12) of the same Article with regard to a Confirmation Concerning Short-Term National Government Bonds, etc. (including the cases where the identification documents set forth in Article 26-18, paragraph (5) have been presented pursuant to the provisions of paragraph (5) of the same Article) is deemed to mean that the document specified by Cabinet Order set forth in Article 5-2, paragraph (9) of the Act has been presented pursuant to the provisions of paragraph (9) of the same Article, and the fact that a Confirmation Concerning the Book-Entry Local Government Bonds or a confirmation concerning the short-term national government bonds, etc. has been provided is deemed to mean that a confirmation has been provided pursuant to the provisions of the same paragraph, respectively; provided, however, that this does not apply where the name and Address entered in a Written Application for Tax Exemption of Book-Entry National Government

Bonds or a Written Application for a Change of Book-Entry National Government Bonds to be submitted by the nonresident or foreign corporation are inconsistent with the name and Address of the nonresident or foreign corporation for which a Confirmation Concerning the Book-Entry Local Government Bonds or a confirmation concerning the short-term national government bonds, etc. has been provided.

- (23) The provisions of the preceding paragraph apply mutatis mutandis where a nonresident or foreign corporation makes, for the first time, entries or records under the book-entry system regarding Book-Entry Local Government Bonds in the account pertaining to the entries or records under the book-entry system covered by a confirmation concerning other Book-Entry Local Government Bonds, the account pertaining to the entries or records under the book-entry system covered by a Confirmation Concerning Interest-Bearing Book-Entry National Government Bonds or the account pertaining to the entries or records under the book-entry system covered by a Confirmation Concerning Short-Term National Government Bonds, etc., or submits a written application prescribed in Article 5-2, paragraph (11) of the Act pursuant to the provisions of paragraph (11) of the same Article with regard to Book-Entry Local Government Bonds (that written application is referred to as a "Written Application for a Change of Book-Entry Local Government Bonds" in paragraph (26)). In this case, in the preceding paragraph, the term "pursuant to the provisions of paragraph (9) of the same Article with regard to a confirmation concerning the Book-Entry Local Government Bonds" is deemed to be replaced with "pursuant to the provisions of paragraph (9) of the same Article with regard to a confirmation concerning other Book-Entry Local Government Bonds or a Confirmation Concerning Interest-Bearing Book-Entry National Government Bonds"; the term "a Confirmation Concerning the Book-Entry Local Government Bonds or" is deemed to be replaced with "a confirmation concerning other Book-Entry Local Government Bonds, a Confirmation Concerning the Interest-Bearing Book-Entry National Government Bonds or"; the term "a Written Application for Tax Exemption of Book-Entry National Government Bonds or Written Application for a Change of Book-Entry National Government Bonds" is deemed to be replaced with "a Written Application for Tax Exemption of Book-Entry Local Government Bonds or Written Application for a Change of Book-Entry Local Government Bonds".
- (24) When a person who has submitted a Written Application for Tax Exemption of Book-Entry National Government Bonds (including one who is deemed to have submitted a Written Application for Tax Exemption of Book-Entry National Government Bonds pursuant to the provisions of paragraph (3); hereinafter the same applies in this paragraph, the following paragraph and paragraph (28)) has made entries or records under the book-entry system



regarding Book-Entry National Government Bonds through a Specified Book-Entry Institution, etc. or Qualified Foreign Intermediary, or submitted a Written Application for a Change of Book-Entry National Government Bonds to a Specified Book-Entry Institution, etc. or Qualified Foreign Intermediary, the Specified Book-Entry Institution, etc. or Qualified Foreign Intermediary must, on each occasion, for each person who has submitted the Written Application for Tax Exemption of Book-Entry National Government Bonds (in the case where the person who has submitted the Written Application for Tax Exemption of Book-Entry National Government Bonds is the trustee of a Qualified Foreign Securities Investment Trust, for each person who has submitted the Written Application for Tax Exemption of Book-Entry National Government Bonds and for each Qualified Foreign Securities Investment Trust accepted thereby), enter or record in the books for book-entry the particulars prescribed in Article 5-2, paragraph (13) of the Act, and preserve those books for book-entry pursuant to the provisions of Ministry of Finance Order.

(25) When a person who has submitted a Written Application for Tax Exemption of Book-Entry National Government Bonds has made entries or records under the book-entry system regarding Book-Entry National Government Bonds through a Qualified Foreign Intermediary, or submitted a Written Application for a Change of Book-Entry National Government Bonds to a Qualified Foreign Intermediary, the Qualified Foreign Intermediary must, for each person who has submitted the Written Application for Tax Exemption of Book-Entry National Government Bonds (in the case where the person who has submitted the Written Application for Tax Exemption of Book-Entry National Government Bonds is the trustee of a Qualified Foreign Securities Investment Trust, for each person who has submitted the Written Application for Tax Exemption of Book-Entry National Government Bonds and for each Qualified Foreign Securities Investment Trust accepted thereby), notify the particulars prescribed in Article 5-2, paragraph (14) of the Act to the Specified Book-Entry Institution, etc. prescribed in the same paragraph of the Qualified Foreign Intermediary pertaining to the Book-Entry National Government Bonds.

(26) The provisions of paragraph (24) apply mutatis mutandis where a person who has submitted a Written Application for Tax Exemption of Book-Entry Local Government Bonds (including one who is deemed to have submitted a Written Application for Tax Exemption of Book-Entry Local Government Bonds pursuant to the provisions of paragraph (5); hereinafter the same applies in this paragraph and paragraph (28)) has made entries or records under the book-entry system regarding Book-Entry Local Government Bonds through a Specified Book-Entry Institution, etc. or Qualified Foreign Intermediary, or submitted a Written Application for a Change of Book-Entry Local Government Bonds to a Specified Book-Entry Institution, etc. or Qualified Foreign

Intermediary; and the provisions of the preceding paragraph apply mutatis mutandis where a person who has submitted a Written Application for Tax Exemption of Book-Entry Local Government Bonds has made entries or records under the book-entry system regarding Book-Entry Local Government Bonds through a Qualified Foreign Intermediary, or submitted a Written Application for a Change of Book-Entry Local Government Bonds to a Qualified Foreign Intermediary. In this case, in paragraph (24), the term "the Written Application for Tax Exemption of Book-Entry National Government Bonds" is deemed to be replaced with "the Written Application for Tax Exemption of Book-Entry Local Government Bonds"; in the preceding paragraph, the term "the Written Application for Tax Exemption of Book-Entry National Government Bonds" is deemed to be replaced with "the Written Application for Tax Exemption of Book-Entry Local Government Bonds", and the term "pertaining to the Book-Entry National Government Bonds" is deemed to be replaced with "pertaining to the Book-Entry Local Government Bonds".

(27) The means specified by Cabinet Order prescribed in Article 5-2, paragraph (14) of the Act is a means of using an electronic data processing system or another means of using information and communications technology that is specified by Ministry of Finance Order.

(28) Where a Specified Book-Entry Institution, etc. has received the notice prescribed in paragraph (25) (including the cases where it is applied mutatis mutandis pursuant to paragraph (26)), it must, on each occasion of receiving the notice, for each person who has submitted a Written Application for Tax Exemption of Book-Entry National Government Bonds or Written Application for Tax Exemption of Book-Entry Local Government Bonds (in the case where the person who has submitted the Written Application for Tax Exemption of Book-Entry National Government Bonds or Written Application for Tax Exemption of Book-Entry Local Government Bonds is the trustee of a Qualified Foreign Securities Investment Trust, for each person who has submitted the Written Application for Tax Exemption of Book-Entry National Government Bonds or Written Application for Tax Exemption of Book-Entry Local Government Bonds and for each Qualified Foreign Securities Investment Trust accepted thereby), enter or record in the books prescribed in Article 5-2, paragraph (14) of the Act the particulars mentioned in the notice, and preserve those books pursuant to the provisions of Ministry of Finance Order.

(29) The national government bonds specified by Cabinet Order prescribed in Article 5-2, paragraph (15), item (i) of the Act are the Book-Entry National Government Bonds specified respectively in the following items for the category of persons listed in the relevant items:

(i) nonresident or foreign corporation (excluding those listed in the following item): the Book-Entry National Government Bonds for which the nonresident

- or foreign corporation made entries or records under the book-entry system (limited to those subject to the provisions of Article 5-2, paragraph (1) of the Act in terms of interest thereon);
- (ii) nonresident or foreign corporation that falls under the category of financial institution prescribed in Article 8, paragraph (1) of the Act or the category of financial instruments business operator, etc. prescribed in paragraph (2) of the same Article: the Book-Entry National Government Bonds for which the nonresident or foreign corporation made entries or records under the book-entry system.
- (30) The means specified by Cabinet Order prescribed in Article 5-2, paragraph (15), item (iii) of the Act is a means of using an electronic data processing system or another means of using information and communications technology that is specified by Ministry of Finance Order.
- (31) A Specified Book-Entry Institution, etc. pertaining to the entries or records under the book-entry system regarding the Book-Entry National Government Bonds held by a nonresident or foreign corporation must, where it has received the notice pursuant to the provisions of Article 5-2, paragraph (15), item (iii) of the Act by means of a document, preserve the document pursuant to the provisions of Ministry of Finance Order.
- (32) The Specified Book-Entry Institution, etc. set forth in the preceding paragraph must, where it has received the notice pursuant to the provisions of Article 5-2, paragraph (15), item (iii) of the Act by the means prescribed in paragraph (30), preserve the document or microfilm produced by outputting the particulars contained in the notice using input-output devices of an electronic data processing system prescribed in the same paragraph (limited to those specified by Ministry of Finance Order), pursuant to the provisions of Ministry of Finance Order.
- (33) The local government bonds specified by Cabinet Order prescribed in Article 5-2, paragraph (16), item (i) of the Act are the Book-Entry Local Government Bonds specified respectively in the following items for the category of persons listed in the relevant items:
- (i) nonresident or foreign corporation (excluding those listed in the following item): the Book-Entry Local Government Bonds for which the nonresident or foreign corporation made entries or records under the book-entry system (limited to those subject to the provisions of Article 5-2, paragraph (1) of the Act in terms of interest thereon);
- (ii) nonresident or foreign corporation that falls under the category of financial institutions prescribed in Article 8, paragraph (1) of the Act or the category of financial instruments business operator, etc. prescribed in paragraph (2) of the same Article: the Book-Entry Local Government Bonds for which the nonresident or foreign corporation made entries or records under the book-

entry system.

- (34) The means specified by Cabinet Order prescribed in Article 5-2, paragraph (16), item (iii) of the Act is a means of using an electronic data processing system or another means of using information and communications technology that is specified by Ministry of Finance Order.
- (35) The provisions of paragraph (31) apply *mutatis mutandis* where the Specified Book-Entry Institution, etc. has received the notice pursuant to Article 5-2, paragraph (16), item (iii) of the Act by means of a document.
- (36) The Specified Book-Entry Institution, etc. set forth in paragraph (31) as applied *mutatis mutandis* pursuant to the preceding paragraph must, where it has received the notice pursuant to the provisions of Article 5-2, paragraph (16), item (iii) of the Act by the means prescribed in paragraph (34), preserve the document or microfilm produced by outputting the particulars contained in the notice using input-output devices of an electronic data processing system prescribed in the same paragraph (limited to those specified by Ministry of Finance Order), pursuant to the provisions of Ministry of Finance Order.

(Special Provisions for Taxation on Interest on Foreign-Issued Company Bonds)

- Article 3-2 (1) The company bonds specified by Cabinet Order, prescribed in Article 6, paragraph (1) of the Act, are the company bonds listed as follows:
- (i) where the interest in whole or in part from bonds issued outside Japan by a foreign corporation listed in Article 141, item (i) of the Corporation Tax Act is attributed to a business which is conducted by the foreign corporation in Japan through a fixed place of business prescribed in the same item, those company bonds;
- (ii) where the interest in whole or in part on company bonds issued outside Japan by a foreign corporation listed in Article 141, item (ii) or item (iii) of the Corporation Tax Act is attributed to a business that is conducted by the foreign corporation as prescribed in these items, those company bonds.
- (2) The amount specified by Cabinet Order, prescribed in Article 6, paragraph (1) of the Act, is an amount listed as follows:
- (i) the part of the amount equivalent to the interest to be received with regard to the general foreign-issued company bonds (meaning the general foreign-issued company bonds prescribed in Article 6, paragraph (1) of the Act; hereinafter the same applies in this Article) issued by a foreign corporation listed in Article 141, item (i) of the Corporation Tax Act, which is attributed to a business that is conducted by the foreign corporation in Japan through a fixed place of business as prescribed in the same item;
- (ii) the part of the amount equivalent to the interest to be received with regard to the general foreign-issued company bonds issued by a foreign corporation

- listed in Article 141, item (ii) or item (iii) of the Corporation Tax Act, which is attributed to a business that is conducted by the foreign corporation as prescribed in these items.
- (3) The amount specified by Cabinet Order, prescribed in Article 6, paragraph (2) of the Act, is an amount listed as follows:
- (i) the part of the amount equivalent to the interest to be paid to a resident or a domestic corporation with regard to the general foreign-issued company bonds issued by a foreign corporation listed in Article 141, item (i) of the Corporation Tax Act, which is attributed to a business that is conducted by the foreign corporation in Japan through a fixed place of business as prescribed in the same item;
  - (ii) the part of the amount equivalent to the interest to be paid to a resident or a foreign corporation with regard to the general foreign-issued company bonds issued by a foreign corporation listed in Article 141, item (ii) or item (iii) of the Corporation Tax Act, which is attributed to a business that is conducted by the foreign corporation as prescribed in these items.
- (4) The place for paying income tax on the interest on general foreign-issued company bonds issued by a foreign corporation that is to be collected and paid pursuant to the provisions of Article 6, paragraph (2) of the Act is the location of the principal office of the foreign corporation in Japan.
- (5) The foreign corporation specified by Cabinet Order, prescribed in Article 6, paragraph (4) of the Act, is a foreign corporation listed as follows:
- (i) a foreign corporation that has its head office or principal office in a state or territory where there are no taxes imposed on corporate income;
  - (ii) a foreign corporation whose tax imposed on the income is not more than 25% of the total income for a business year as prescribed in Article 2, paragraph (2), item (xix) of the Act that includes the day on which it issued general foreign-issued company bonds pertaining to the interest for which it seeks the application of the provisions of Article 6, paragraph (4) of the Act (referred to as "business year of issuing foreign-issued company bonds" in paragraph (7), item (iii)).
- (6) The provisions of Article 25-19, paragraph (2) apply mutatis mutandis to the determination as to whether or not a foreign corporation that issues general foreign-issued company bonds (referred to as a "foreign corporation issuing foreign-issued company bonds" in the following paragraph to paragraph (9)) falls under the category of the foreign corporation listed in item (ii) of the preceding paragraph. In this case, the term "each business year" in paragraph (2), item (i) of the same Article is deemed to be replaced with "the business year of issuing foreign-issued company bonds (meaning the business year of issuing foreign-issued company bonds prescribed in Article 3-2, paragraph (5), item (ii); hereinafter the same applies in this paragraph)", and the term "each

business year" in item (ii) of the same paragraph is deemed to be replaced with "the business year of issuing foreign-issued company bonds".

(7) Where a foreign corporation issuing foreign-issued company bonds meets all of the following requirements, it is not included in the category of foreign corporations listed in the items of paragraph (5):

(i) its principal business does not fall under any of the categories of the holding of shares (including capital contributions; referred to as "shares, etc." in paragraphs (9) to (11)) or bonds, the provisions 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 those rights) or copyrights (including publication rights, neighboring rights and any other equivalent rights), or the lending of vessels or aircraft;

(ii) it 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 (referred to as the "State of the Head Office" in (b) of the following item), and takes charge of managing, controlling, and operating the business on its own account;

(iii) it falls under any of the cases specified as follows for the respective categories of its principal businesses that it conducts in the business year of issuing foreign-issued company bonds:

(a) wholesale business, banking business, trust business, financial instruments business, insurance business, water transportation business, or air transportation business: The cases specified as follows for the categories of its principal businesses listed respectively as follows:

1. wholesale business: where, out of the total revenue from selling inventory assets (meaning inventory assets prescribed in Article 2, item (xx) of the Corporation Tax Act; the same applies in 1.) for the business year of issuing foreign-issued company bonds (where there are any commissions to be received for agent or intermediary services for the buying or selling of inventory assets, the revenues include the amount from the transactions for which the commissions were generated; hereinafter referred to as the "Amount of Sales Transactions" in 1.), the ratio of the sum of the Amount of Sales Transactions with a person other than affiliated persons exceeds 50 percent, or out of the sum of the acquisition costs for acquiring inventory assets for the business year of issuing foreign-issued company bonds (where there are any commissions to be received for agent or intermediary services for the buying or selling of inventory assets, the acquisition costs include the amount from the transactions for which the commissions were generated; hereinafter referred to as

- the "Amount of Purchase Transactions" in 1.), the ratio of the sum of the Amount of Purchase Transactions with a person other than affiliated persons exceeds 50 percent;
2. banking business: where, out of the sum of the total interest received for the business year of issuing foreign-issued company bonds, the ratio of the sum of the interest to be received from a person other than affiliated persons exceeds 50 percent, or out of the sum of the total interest paid for the business year of issuing foreign-issued company bonds, the ratio of the sum of the interest to be paid to a person other than affiliated persons exceeds 50 percent;
  3. trust business: where, out of the sum of the total trust charge for the business year of issuing foreign-issued company bonds, the ratio of the sum of the trust charge to be received from a person other than affiliated persons exceeds 50 percent;
  4. financial instruments business: where, out of the sum of the total commissions received (including profits from the buying and selling of securities) for the business year of issuing foreign-issued company bonds, the ratio of the sum of the commissions to be received from a person other than affiliated persons exceeds 50 percent;
  5. insurance business: where, out of the sum of the total premium income for the business year of issuing foreign-issued company bonds, the ratio of the sum of the premium income to be received from a person other than affiliated persons (where the premium income pertains to reinsurance, limited to premium income from insurance for assets held by a person other than affiliated persons or damages incurred by a person other than affiliated persons) exceeds 50 percent;
  6. water transportation business or air transportation business: where, out of the total revenue from the operation or rental of vessels or operation or rental of aircrafts for the business year of issuing foreign-issued company bonds, the ratio of the sum of the revenue to be received from a person other than affiliated persons exceeds 50 percent;
- (b) business other than those listed in (a): The cases specified as follows for the respective categories of its principal businesses listed as follows:
1. real estate business: where conducting a buying and selling or rental business of real estate (including acts to let others use the real estate) (real estate includes the rights thereon; hereinafter the same applies in 1.) mainly located in the State of the Head Office, providing agent or intermediary services for the buying and selling or rental business of the real estate, and managing the real estate;
  2. rental and leasing business: where conducting a rental business for goods to be provided for use mainly in the State of the Head Office;

3. business other than those listed in (a) above, and in 1. and 2.: where conducting a business mainly in the State of the Head Office.
- (8) Where transactions between a foreign corporation issuing foreign-issued company bonds and an affiliated person related to the foreign corporation issuing foreign-issued company bonds are conducted indirectly via a person other than an affiliated person related to the foreign corporation issuing foreign-issued company bonds (hereinafter referred to as a "Non-Affiliated Person" in this paragraph), transactions between the foreign corporation issuing foreign-issued company bonds and the Non-Affiliated Person are deemed to have been conducted directly between the foreign corporation issuing foreign-issued company bonds and the affiliated person, and the provisions of item (iii), (a) of the preceding paragraph apply, except in the case where there are reasonable grounds for having the Non-Affiliated Person intervene in the transactions.
- (9) The affiliated person prescribed in paragraph (7), item (iii), (a) and the preceding paragraph is a person listed as follows:
- (i) when there is a relationship between a foreign corporation issuing foreign-issued company bonds and any other corporation whereby either of them directly or indirectly holds over 50 percent of the total number or total amount of the other corporation's issued shares or capital contributions (excluding either of the corporations' own shares held by the corporation itself; hereinafter referred to as the "Issued Shares, etc." in this paragraph to paragraph (11)), the relevant other corporation (excluding a corporation falling under the category of persons listed in the following item);
  - (ii) when there is a relationship whereby over 50 percent of the total number or total amount of the Issued Shares, etc. of a foreign corporation issuing foreign-issued company bonds and any other corporation are respectively held directly or indirectly by the same person (where the person is an individual, the individual and an individual who has a special relationship as prescribed in Article 4, paragraph (1) of the Order for Enforcement of the Corporation Tax Act with the individual), the relevant other corporation.
- (10) In the case referred to in item (i) of the preceding paragraph, whether or not one of the two corporations directly or indirectly holds over 50 percent of the total number or the total amount of the other corporation's Issued Shares, etc. is to be determined according to the ratio obtained by adding the ownership ratio for the shares, etc. pertaining to the relevant other corporation held directly by the relevant one of the two corporations (meaning the ratio of the number or the amount of the relevant other corporation's shares or capital contributions held by the relevant one of the two corporations out of the total Issued Shares, etc. of the relevant other corporation) and the ownership ratio for the shares, etc. pertaining to the relevant other corporation held indirectly



by the relevant one of the two corporations.

- (11) The ownership ratio for the shares, etc. held indirectly that is prescribed in the preceding paragraph is a ratio specified in the following items for the category of cases listed in the respective items (where falling under both of the following cases, the sum of the ratios specified as follows):
- (i) where over 50 percent of the total number or the total amount of the issued shares, etc. of a corporation which is a shareholder, etc. (meaning a shareholder, etc. prescribed in Article 2, item (viii)-2 of the Income Tax Act; the same applies in the following item) of the other corporation set forth in the preceding paragraph are held by the relevant one of the two corporations set forth in the preceding paragraph: The ratio of the number or the amount of shares, etc. of the relevant other corporation held by the corporation which is a shareholder, etc. out of the total issued shares, etc. of the relevant other corporation (where there are two or more of those corporations which are shareholders, etc., the sum of the ratios calculated for each of them);
  - (ii) where a single corporation or two or more corporations intervene between a corporation which is a shareholder, etc. of the other corporation set forth in the preceding paragraph (excluding a corporation which is a shareholder, etc. set forth in the preceding item falling under the case listed in the same item) and the relevant one of the two corporations set forth in the preceding paragraph, and have a linkage with them through holding the issued shares, etc. (hereinafter the intervening corporation is referred to as a "Capital Contribution-Related Corporation" in this item) (limited to the case where over 50 percent of the total number or the total amount of the issued shares, etc. of each of a Capital Contribution-Related Corporation and the corporation which is a shareholder, etc. are held by the relevant one of the two corporations or a Capital Contribution-Related Corporation (the relevant one of the two corporations or Capital Contribution-Related Corporations are limited to those over 50 percent of the total number or the total amount of whose issued shares, etc. are held by the relevant one of the two corporations or other Capital Contribution-Related Corporations)): The ratio of the number or the amount of shares, etc. of the relevant other corporation held by the corporation which is a shareholder, etc. out of the total issued shares, etc. of the relevant other corporation (where there are two or more of those corporations which are shareholders, etc., the sum of the ratios calculated for each of them).
- (12) The person in charge of handling payment as specified by Cabinet Order prescribed in Article 6, paragraph (4) of the Act is the person prescribed in Article 2-2, paragraph (2) who is in Japan, and the person who provides, outside Japan, intermediary, brokerage or agent services (referred to as the "intermediary services, etc." in paragraph (21) and paragraph (35)) for the

- receipt of interest on foreign-issued company bonds prescribed in Article 6, paragraph (1) of the Act (referred to as "foreign-issued company bonds" in paragraph (33)) as the person's own operations or in relation to the operations.
- (13) A written application for tax exemption pursuant to the provisions of Article 6, paragraph (4) of the Act (referred to as a "written application for tax exemption" in the following paragraph to paragraph (17)) must be submitted, on each occasion of receiving payment of interest on general foreign-issued company bonds, to the district director of the tax office prescribed in Article 6, paragraph (4) of the Act, via the person who pays the interest (in the case where the interest is paid via a person in charge of handling payment as prescribed in paragraph (4) of the same Article (hereinafter referred to as a "Person in Charge of Handling Payment" in this Article), submission must be made via the Person in Charge of Handling Payment and the person who pays the interest).
- (14) A person who submits a written application for tax exemption must, upon submitting it, present a document that certifies that the person falls under the category of nonresidents or foreign corporations (limited to the document that contains the name and domicile or residence or the location of the person's head office or principal office (hereinafter referred to as "Domicile, etc." in this paragraph, the following paragraph and paragraph (19)), each of which is located outside Japan; the same applies in the same paragraph), to a person who pays interest based on the written application for tax exemption (in the case where the interest is paid via a Person in Charge of Handling Payment, the document must be presented to the Person in Charge of Handling Payment; hereinafter the same applies in this paragraph and the following paragraph), and the person who pays interest must confirm, by the document presented thereto, the name and Domicile, etc. located outside Japan as entered in the written application for tax exemption.
- (15) A person who pays interest on general foreign-issued company bonds must, when they have confirmed, by the document prescribed in the preceding paragraph, the name or Domicile, etc. located outside Japan as entered in the written application for tax exemption pertaining to the interest on the general foreign-issued company bonds which has been submitted thereto, enter in the written application for tax exemption to that effect that the confirmation has been provided as well as the name and Domicile, etc. of the person who pays interest.
- (16) A person who pays interest on general foreign-issued company bonds must, when they have received a written application for tax exemption pertaining to the interest on the general foreign-issued company bonds, submit the written application for tax exemption to the district director of the tax office prescribed in Article 6, paragraph (4) of the Act no later than the final day of the month

- that includes the day on which the person has received the written application.
- (17) A person who pays interest on general foreign-issued company bonds must, when they have received a written application for tax exemption pertaining to the interest on the general foreign-issued company bonds, prepare and preserve a copy of the written application for tax exemption (including its equivalent), pursuant to the provisions of Ministry of Finance Order.
- (18) The interest specified by Cabinet Order prescribed in Article 6, paragraph (4) and paragraph (10) of the Act is the interest listed as follows:
- (i) interest to be received by a nonresident listed in Article 164, paragraph (1), item (i) of the Income Tax Act, which is attributed to a business that is conducted by the nonresident in Japan through a fixed place of business as prescribed in Article 164, paragraph (1), item (i) of the same Act;
  - (ii) interest to be received by nonresidents listed in Article 164, paragraph (1), item (ii) or item (iii) of the Income Tax Act, which is attributed to a business prescribed in these provisions that is conducted by these nonresidents.
- (19) A nonresident or foreign corporation who seeks the application of Article 6, paragraph (7) of the Act with respect to interest on specified foreign-issued company bonds prescribed in paragraph (7) of the same Article (hereinafter referred to as "Specified Foreign-Issued Company Bonds" through to paragraph (29)) must, upon entrusting a Person in Charge of Handling Payment with custody of the Specified Foreign-Issued Company Bonds, pursuant to the provisions of Ministry of Finance Order, notify the Person in Charge of Handling Payment of their or its name and Domicile, etc. located outside Japan, and obtain a confirmation with regard to the particulars contained in the notification, by presenting a document that certifies that they or it falls under the category of nonresidents or foreign corporations or by any other method equivalent thereto.
- (20) Where a nonresident or foreign corporation who seeks the application of Article 6, paragraph (7) of the Act with respect to interest on Specified Foreign-Issued Company Bonds entrusts a Person in Charge of Handling Payment with custody of the Specified Foreign-Issued Company Bonds, if they or it has already obtained a confirmation pursuant to the provisions of the preceding paragraph when entrusting the Person in Charge of Handling Payment with custody of other Specified Foreign-Issued Company Bonds or the case falls under any of those specified by Ministry of Finance Order as equivalent thereto, notwithstanding the provisions of the same paragraph, the nonresident or foreign corporation is not required to give a notification pursuant to the provisions of the same paragraph when entrusting custody of the Specified Foreign-Issued Company Bonds.
- (21) The person in charge of handling custody and payment prescribed in Article 6, paragraph (7) of the Act (hereinafter referred to as the "Person in Charge of

Handling Custody and Payment" through to paragraph (26)) must, on each occasion of receiving the delivery of interest on Specified Foreign-Issued Company Bonds, of which the person is entrusted with custody, in the course of the intermediary services, etc. for the receipt of the interest, no later than the day preceding the day on which the person is to receive the delivery, give a notice pursuant to the provisions of paragraph (7) of the same Article (hereinafter referred to as a "Notice" through to paragraph (23)) to provide interest recipient information prescribed in paragraph (7) of the same Article (hereinafter referred to as "Interest Recipient Information" through to paragraph (27)) which pertains to the interest to be delivered thereto to the person who pays the interest (in the case where the interest is delivered via any other Person in Charge of Handling Payment with whom the Person in Charge of Handling Custody and Payment has further entrusted custody, a Notice must be given to the person who pays the interest via the relevant other Person in Charge of Handling Payment). In this case, if the Person in Charge of Handling Custody and Payment receives the delivery of interest on the Specified Foreign-Issued Company Bonds, for the first time, on or after the day on which 40 days have elapsed since the day on which the Specified Foreign-Issued Company Bonds were issued, the Notice of Interest Recipient Information pertaining to the interest to be delivered thereto must be given on or after that day on which the 40-day period has expired.

(22) Where a Person in Charge of Handling Custody and Payment receives the delivery of interest on Specified Foreign-Issued Company Bonds, of which the person is entrusted with custody, on or after the day on which the person has received the delivery of interest pertaining to the Interest Recipient Information of which the person gave a Notice to the person who pays interest on the Specified Foreign-Issued Company Bonds (limited to the information provided in the Notice stating to the effect that it falls under cases set forth in Article 6, paragraph (7), item (i) of the Act; hereinafter the same applies in this paragraph), if the Person in Charge of Handling Custody and Payment has confirmed that all persons who are to receive payment of the interest (excluding interest subject to the provisions of Article 3-3, paragraph (3) or paragraph (6) of the Act; hereinafter the same applies in this paragraph) to be delivered thereto fall under the category of nonresidents or foreign corporations, the Person in Charge of Handling Custody and Payment may omit to give a Notice of Interest Recipient Information pertaining to the interest to be delivered thereto.

(23) The provisions of the preceding paragraph apply only where the Person in Charge of Handling Custody and Payment set forth in the same paragraph has obtained approval in advance, pursuant to the provisions of Ministry of Finance Order, from the person who pays interest set forth in the same

paragraph with regard to the omission of a notice prescribed in the same paragraph. In this case, if the Person in Charge of Handling Custody and Payment has not given, by the day preceding the day on which the person is to receive the delivery of interest on the relevant Specified Foreign-Issued Company Bonds, a notice of Interest Recipient Information pertaining to the interest to be delivered thereto, a notice of Interest Recipient Information is deemed to have been given, as of that day, by the Person in Charge of Handling Custody and Payment to the person who pays interest, stating to the effect that the case falls under cases set forth in Article 6, paragraph (7), item (i) of the Act.

(24) Where a Person in Charge of Handling Custody and Payment is entrusted by subcontract with custody of other Specified Foreign-Issued Company Bonds with the same issue as that of the Specified Foreign-Issued Company Bonds of which the person is directly entrusted with custody, when the person has received a notice as the relay point via which the notice will be given pursuant to the provisions of Article 6, paragraph (7) of the Act with regard to the Interest Recipient Information pertaining to the interest on the relevant other Specified Foreign-Issued Company Bonds, the person may, pursuant to the provisions of Ministry of Finance Order, give a notice to provide the Interest Recipient Information pertaining to the interest on the Specified Foreign-Issued Company Bonds of which the person is directly entrusted with custody together with the Interest Recipient Information of which the person has received a notice as such relay point to the person who pays the interest (in the case where the interest is delivered via any other Person in Charge of Handling Payment with whom the Person in Charge of Handling Custody and Payment has further entrusted custody, to the person who pays the interest via the relevant other Person in Charge of Handling Payment). In this case, the notice is deemed to be a notice of Interest Recipient Information given pursuant to the provisions of paragraph (7) of the same Article.

(25) When a person who is entrusted by subcontract with custody of Specified Foreign-Issued Company Bonds (excluding the person who is deemed to be a Person in Charge of Handling Custody and Payment who is entrusted with custody of other Specified Foreign-Issued Company Bonds with the same issue as that of the Specified Foreign-Issued Company Bonds; hereinafter referred to as a "Person in Charge of Handling Payment Based on Entrustment by Subcontract" in this paragraph and the following paragraph) has received a notice as the relay point via which the notice will be given pursuant to the provisions of Article 6, paragraph (7) of the Act with regard to two or more pieces of Interest Recipient Information pertaining to the interest on the Specified Foreign-Issued Company Bonds, the person may, pursuant to the provisions of Ministry of Finance Order, give a notice to provide these pieces of

Interest Recipient Information of which the person has received a notice as such relay point together to the person who pays the interest (in the case where the interest is delivered via any other Person in Charge of Handling Payment with whom the Person in Charge of Handling Custody and Payment has further entrusted custody, to the person who pays the interest via the relevant other Person in Charge of Handling Payment). In this case, the notice is deemed to be a notice of Interest Recipient Information given pursuant to the provisions of paragraph (7) of the same Article.

(26) The provisions of paragraph (22) and paragraph (23) apply mutatis mutandis in the following cases:

(i) where the person in charge of handling custody and payment or Person in Charge of Handling Payment Based on Entrustment by Subcontract gives a notice, as the relay point via which a notice will be given pursuant to the provisions of Article 6, paragraph (7) of the Act, to provide the Interest Recipient Information pertaining to the interest on the Specified Foreign-Issued Company Bonds of which the person is entrusted with custody directly or by subcontract, to the other Person in Charge of Handling Payment as prescribed in paragraph (7) of the same Article;

(ii) where the Person in Charge of Handling Payment Based on Entrustment by Subcontract gives a notice pursuant to the provisions of the preceding paragraph to provide the Interest Recipient Information pertaining to the interest on the Specified Foreign-Issued Company Bonds of which the person is entrusted with custody by subcontract, to the person who pays interest on the Specified Foreign-Issued Company Bonds.

(27) A person who pays interest on Specified Foreign-Issued Company Bonds must, when paying the interest, prepare an interest recipient confirmation document prescribed in Article 6, paragraph (7) of the Act (hereinafter referred to as an "Interest Recipient Confirmation Document" in the following paragraph) based on the interest recipient information provided in the notice given thereto pursuant to the provisions of paragraph (21), paragraph (24) or paragraph (25) (including the interest recipient information of which a notice is deemed to have been given pursuant to the provisions of paragraph (23) (including the cases where it is applied mutatis mutandis pursuant to the preceding paragraph)).

(28) A person who pays interest on Specified Foreign-Issued Company Bonds must submit an Interest Recipient Confirmation Document prepared pursuant to the provisions of the preceding paragraph to the district director the tax office prescribed in Article 6, paragraph (7) of the Act no later than the final day of the month following the month that includes the day on which the interest pertaining to the Interest Recipient Confirmation Document has been paid.

- (29) A person who pays interest on Specified Foreign-Issued Company Bonds must enter in the books the interest recipient information provided in the notice given thereto pursuant to the provisions of paragraph (27), and preserve those books pursuant to the provisions of Ministry of Finance Order.
- (30) The financial institution or financial instruments business operator specified by Cabinet Order prescribed in Article 6, paragraph (8) of the Act is any of the following:
- (i) a bank, shinkin bank, Federation of Shinkin Banks, the Shoko Chukin Bank Limited, the Norinchukin Bank, a life insurance company, and casualty insurance company;
  - (ii) a financial instruments business operator prescribed in Article 2, paragraph (9) of the Financial Instruments and Exchange Act (limited to one engaged in a Type I financial instruments business prescribed in Article 28, paragraph (1) of the same Act).
- (31) The provisions of paragraphs (13) to (17), and paragraphs (19) to (29) apply mutatis mutandis where a domestic financial institution, etc. prescribed in Article 6, paragraph (8) of the Act is subject to the provisions of the main clause of paragraph (4) of the same Article as well as paragraph (6) and paragraph (7) of the same Article, all of which apply mutatis mutandis pursuant Article 6, paragraph (8) of the Act. In this case, in paragraph (14), the term "the name and domicile or residence or the location of the person's head office or principal office (hereinafter referred to as "Domicile, etc." in this paragraph, the following paragraph and paragraph (19)), each of which is located outside Japan" and the term "name and Domicile, etc. located outside Japan" is deemed to be replaced with "name and the location of the person's head office or principal office"; in paragraph (15) and paragraph (19), the term "name and Domicile, etc. located outside Japan" is deemed to be replaced with "name and the location of the person's head office or principal office"; and in paragraph (22), the term "nonresident or foreign corporation" is deemed to be replaced with "nonresident or foreign corporation, or domestic financial institution, etc. prescribed in Article 6, paragraph (8) of the Act".
- (32) The state designated by Cabinet Order prescribed in Article 6, paragraph (11) of the Act is Switzerland.
- (33) The requirements specified by Cabinet Order prescribed in Article 6, paragraph (11) of the Act are the requirements listed as follows:
- (i) redemption of the principal of the relevant foreign-issued company bonds and payment of interest thereon are made in the designated state prescribed in Article 6, paragraph (11) where the foreign-issued company bonds were issued, using the currency of the designated state;
  - (ii) in the underwriting contract, etc. (meaning an underwriting contract, etc. prescribed in Article 6, paragraph (9), item (i) of the Act) concluded by the

person who issues the foreign-issued company bonds, it is provided that the person who performs the underwriting, etc. prescribed in paragraph (9), item (i) of the same Article (referred to as the "underwriting, etc." in the following item) of the foreign-issued company bonds may not have a resident or a domestic corporation acquire or buy the foreign-issued company bonds by way of an offering or secondary distribution, dealing in an offering or secondary distribution, or any other operations equivalent thereto (referred to as the "offering or secondary distribution, etc." in the following item) under the underwriting contract, etc.;

- (iii) all persons who have performed the underwriting, etc. of the relevant foreign-issued company bonds have, pursuant to the provisions of Ministry of Finance Order, submitted a document stating to the effect that the requirement set forth in the preceding item has been satisfied during the performance of the offering or secondary distribution, etc. of all of the foreign-issued company bonds for which the underwriting, etc. has been performed, as well as any other particulars specified by Ministry of Finance Order, to the competent district director having jurisdiction over the location of the head office or principal office of the person who issued the foreign-issued company bonds (where the person who issued the foreign-issued company bonds is a foreign corporation, the location of the foreign corporation's principal office in Japan), via the person who issued the bonds.
- (34) With respect to the application of the provisions of Article 267, paragraph (2) of the Order for Enforcement of the Income Tax Act in the case where a resident who has, in a given year, interest income from interest (excluding interest subject to the provisions of Article 3-3, paragraph (1) of the Act) on general foreign-issued company bonds, submits a final return form prescribed in Article 267, paragraph (2) of the same Act, the term "written statement" in paragraph (2) of the same Article is deemed to be replaced with "written statement or any other document specified by Ministry of Finance Order".
- (35) A person who pays interest on specified foreign-issued company bonds may request a person in charge of handling payment in Japan to give a notice thereto of the part of the amount of interest on the relevant foreign-issued company bonds delivered by the Person in Charge of Handling Payment in the course of intermediary services, etc. for the receipt of the interest, which is subject to the provisions of Article 3-3, paragraph (3) or paragraph (6) of the Act.
- (36) The provisions of paragraph (12) to the preceding paragraph apply mutatis mutandis where the provisions of Article 6, paragraphs (1) to (12) of the Act as applied mutatis mutandis pursuant to paragraph (13) of the same Article apply with respect to interest on foreign currency denominated bonds prescribed in the same paragraph.



(Exclusion from Taxation of Interest on Deposits Settled in the Special International Financial Transactions Account)

Article 3-2-2 (1) The bond transaction with a repurchase or resale agreement specified by Cabinet Order as prescribed in Article 7 of the Act is a bond transaction with a repurchase/resale agreement (referred to as a "bond transaction with a repurchase/resale agreement" in the following paragraph) prescribed in Article 283, paragraph (4) of the Order for Enforcement of the Income Tax Act.

(2) The margin specified by Cabinet Order as prescribed in Article 7 of the Act is a margin equivalent to the amount calculated, in the case where in a bond transaction with a repurchase/resale agreement that a financial institution prescribed in the same Article conducts with a foreign corporation prescribed in the same Article and that has been settled in the special international financial transaction account, the value for purchasing bonds upon the purchase is less than the value for reselling bonds of the same type and the same quantity upon resale, by deducting the value for the purchase from the value for the resale.

(Special Provisions for Taxation on Distribution of Profit from Foreign Special Purpose Trust or Distribution of Proceeds from Foreign Special Investment Trust)

Article 4-9 (1) Where a distribution of profit from a foreign special purpose trust prescribed in Article 9-5-2, paragraph (7), item (i) of the Act or a distribution of proceeds from a foreign special investment trust prescribed in item (ii) of the same paragraph is paid to a foreign corporation in Japan, with regard to the application of the provisions of Article 225, paragraph (1) of the Income Tax Act, the distribution of profit from a foreign special purpose trust or distribution of proceeds from a foreign special investment trust is deemed to be a dividend of surplus to be received from a domestic corporation prescribed in Article 161, item (v), (a) of the same Act.

(2) With regard to the application of the provisions of Article 225, paragraph (1) of the Income Tax Act to a person who pays a distribution of profit from a special purpose trust prescribed in Article 9-5-2, paragraph (7), item (i) of the Act or a distribution of proceeds from a foreign special investment trust prescribed in item (ii) of the same paragraph to a nonresident or a foreign corporation in Japan, the phrase "a person who makes payment" in item (viii) in the same paragraph is deemed to be replaced with "a person who makes payment (including a person who pays a distribution of profit from a foreign special purpose trust prescribed in Article 9-5-2, paragraph (7), item (i)

(Special Provisions for Taxation on Distribution of Profit from Foreign Special

Purpose Trust or Distribution of Proceeds from Foreign Special Investment Trust) of the Act on Special Measures Concerning Taxation or a distribution of proceeds from a foreign special investment trust prescribed in item (ii) of the same paragraph to a nonresident or a foreign corporation in Japan)".

### **Section 8-2 Special Provisions for Taxation on Income from Transfer of Securities**

(Special Provisions for Taxation on Domestic Source Income from Transfer of Shares of a Nonresident Having No Permanent Establishments)

- Article 25-11 (1) The amount that is calculated pursuant to the method specified by Cabinet Order as the amount of domestic source income from transfer of shares, etc. prescribed in Article 37-12, paragraph (1) of the Act is the sum of the amounts that are treated as the amount of business income, the amount of capital gains, and the amount of miscellaneous income in the case where domestic source income from the transfer of shares, etc. prescribed in the same paragraph (hereinafter referred to as "Domestic Source Income from the Transfer of Shares, etc." in this Article) is calculated in accordance with the provisions of Part II, Chapter II, Section 2 of the Income Tax Act. In this case, if there is any amount of loss generated when calculating these amounts in the relevant year, the amount of loss is to be deducted from the amount of income prescribed in the following items for the category of loss listed in those items:
- (i) the amount of loss generated when calculating the amount that is treated as the amount of business income in the case where Domestic Source Income from the Transfer of Shares, etc. is calculated in accordance with the provisions of Part II, Chapter II, Section 2 of the Income Tax Act: The amounts that are treated as the amount of capital gain and the amount of miscellaneous income in the case of calculating Domestic Source Income from the Transfer of Shares, etc. in accordance with the provisions of the same Section;
  - (ii) the amount of loss generated when calculating the amount that is treated as the amount of capital gains in the case where Domestic Source Income from the Transfer of Shares, etc. is calculated in accordance with the provisions of Part II, Chapter II, Section 2 of the Income Tax Act: The amounts that are treated as the amount of business income and the amount of miscellaneous income in the case where Domestic Source Income from the Transfer of Shares, etc. is calculated in accordance with the provisions of the same Section;
  - (iii) the amount of loss generated when calculating the amount that is treated as the amount of miscellaneous income in the case where Domestic Source Income from the Transfer of Shares, etc. is calculated in accordance with the

provisions of Part II, Chapter II, Section 2 of the Income Tax Act: The amounts that are treated as the amount of business income and the amount of capital gains in the case where Domestic Source Income from the Transfer of Shares, etc. is calculated in accordance with the provisions of the same Section.

- (2) The provisions of Article 25-8, paragraph (6) apply mutatis mutandis where the provisions of Article 37-10, paragraph (3) of the Act as applied mutatis mutandis pursuant to Article 37-12, paragraph (4) of the Act apply.
- (3) The provisions of Article 25-8, paragraph (7) apply mutatis mutandis pursuant to the calculation of the amount of business income prescribed in paragraph (1).
- (4) Where a nonresident having no permanent establishments in Japan as prescribed in Article 37-12, paragraph (1) of the Act who has Domestic Source Income from the Transfer of Shares, etc. in the relevant year files a final return form, they must, pursuant to the provisions of Ministry of Finance Order, attach a detailed statement concerning the calculation of the amount of Domestic Source Income from the Transfer of Shares, etc. to the final return form. In this case, with regard to the application of the provisions of Article 120, paragraph (4) of the Income Tax Act, the phrase "business income" in the same paragraph is deemed to be replaced with "business income (excluding Domestic Source Income from the Transfer of Shares, etc. prescribed in Article 37-12, paragraph (1) (Special Provisions for Taxation on Domestic Source Income from Transfer of Shares, etc. of a Nonresident Having No Permanent Establishments) of the Act on Special Measures Concerning Taxation)".
- (5) The provisions of Article 25-8, paragraphs (12) through (15) apply mutatis mutandis in the case where the provisions of Article 37-12, paragraph (1) of the Act apply. In this case, in the provisions of Article 25-8, paragraphs (12) through (15), the phrase "Article 37-10, paragraph (1)" is deemed to be replaced with "Article 37-12, paragraph (1)"; the phrase "(Special Provisions for Taxation on Capital Gains, etc. from Shares, etc.)" is deemed to be replaced with "(Special Provisions for Taxation on Domestic Source Income from Transfer of Shares, etc. of a Nonresident Having No Permanent Establishments)"; the phrase "with regard to the amount of taxable capital gains, etc. from shares, etc. (hereinafter referred to as the "Amount of Taxable Capital Gains, etc. from Shares, etc.") and the estimated amount of taxable timber income, the provisions of Chapter III (Calculation of Tax Amount) and the same paragraph" is deemed to be replaced with "with regard to the amount of domestic source income from shares, etc. (in the case of applying the provisions of Article 72 (Deduction of Casualty Loss), Article 78 (Deduction of Donation), Article 86 (Basic Exemption), and Article 87 (Order of Exemption and Deduction from Income) that are applied pursuant to the provisions of

Article 37-10, paragraph (6), item (v) (Special Provisions for Taxation on Capital Gains from Shares) of the same Act as applied mutatis mutandis pursuant to paragraph (4) of the same Article, the amount after the application; hereinafter referred to as the "Amount of Taxable Domestic Source Income from the Transfer of Shares, etc.") and the estimated amount of taxable timber income, the provisions of Chapter III (Calculation of Tax Amount) and Article 37-12, paragraph (1) of the same Act"; the phrase "the amount of capital gains, etc. from shares, etc. (hereinafter referred to as the "Amount of Capital Gains, etc. from Shares, etc.")" is deemed to be replaced with "the amount of domestic source income from the transfer of shares, etc. (hereinafter referred to as the "Amount of Domestic Source Income from the Transfer of Shares, etc.")"; the phrase "the Amount of Capital Gains, etc. from Shares, etc." is deemed to be replaced with "the Amount of Domestic Source Income from the Transfer of Shares, etc."; the phrase "the Amount of Taxable Capital Gains, etc. from Shares, etc." is deemed to be replaced with "the Amount of Taxable Domestic Source Income from the Transfer of Shares, etc."; and the phrase "the amount of taxable capital gains, etc. from shares, etc. (hereinafter referred to as "the Amount of Taxable Capital Gains, etc. from Shares, etc.")" is deemed to be replaced with "the Amount of Domestic Source Income from the Transfer of Shares, etc. (in the case of applying the provisions of Article 72 (Deduction of Casualty Loss), Article 78 (Deduction of Donation), Article 86 (Basic Exemption), and Article 87 (Order of Exemption and Deduction from Income) that are applied pursuant to the provisions of Article 37-10, paragraph (6), item (v) (Special Provisions for Taxation on Capital Gains from Shares) of the same Act as applied mutatis mutandis pursuant to paragraph (4) of the same Article, the amount after the application; hereinafter referred to as the "Amount of Taxable Domestic Source Income from the Transfer of Shares, etc.")".

(Special Provisions for Taxation in Cases of Receiving Delivery of Foreign Parent Corporation's Shares as a Result of Merger)

Article 25-14 (1) The shares specified by Cabinet Order as shares to be managed as assets pertaining to business conducted in Japan as prescribed in Article 37-14-2, paragraph (1) of the Act are shares (including capital contributions; hereinafter the same applies in this Article) which are managed as assets pertaining to the business conducted in Japan by a nonresident having permanent establishments in Japan and which are managed at permanent establishments in Japan (meaning the fixed place for conducting a business prescribed in Article 164, paragraph (1), item (i) of the Income Tax Act, the construction work, etc. prescribed in item (ii) of the same paragraph that is carried out for more than one year, or the agent, etc. prescribed in item (iii) of

the same paragraph; the same applies in the following paragraph and paragraph (3)).

- (2) The act specified by Cabinet Order as prescribed in Article 37-14-2, paragraph (4) of the Act is any of the following acts:
  - (i) an act of discontinuing the management of the shares as assets pertaining to the business conducted in Japan;
  - (ii) an act of transferring the shares to the person's domicile, residence or office, place of business, or any other place equivalent thereto located outside Japan;
  - (iii) any other act of discontinuing the management of the shares at permanent establishments in Japan.
- (3) Where a nonresident having permanent establishments in Japan does not manage all or part of the parent corporation's shares managed in a domestic business prescribed in Article 37-14-2, paragraph (4) of the Act (hereinafter referred to as the "Parent Corporation's Shares Managed in a Domestic Business" through to paragraph (5), and paragraph (9) and paragraph (10)) as assets pertaining to the business conducted in Japan at the time of receiving the delivery thereof or where they do not manage the shares at permanent establishments in Japan, with regard to the part of the Parent Corporation's Shares Managed in a Domestic Business that is not managed, the provisions of paragraph (4) of the same Article apply by deeming that the nonresident has performed any of the acts listed in the items of the preceding paragraph immediately after they have managed the part as assets pertaining to the business conducted in Japan at the time of the delivery thereof and managed the same at permanent establishments in Japan.
- (4) Where any of the acts listed in the items of paragraph (2) is performed with regard to the Parent Corporation's Shares Managed in a Domestic Business, the act is not to be included in the scope of acts listed in Article 279, paragraph (3), item (ii) of the Order for Enforcement of the Income Tax Act.
- (5) Where the shares of the same issue held by a nonresident having permanent establishments in Japan contain the Parent Corporation's Shares Managed in a Domestic Business and shares other than those Parent Corporation's Shares Managed in a Domestic Business, when any of the acts listed in the items of paragraph (2) is performed with respect to these shares, the provisions of Article 37-14-2, paragraph (4) of the Act apply by deeming that the act has been performed first with respect to the Parent Corporation's Shares Managed in a Domestic Business among those shares of the same issue involved in the act.
- (6) The relationship specified by Cabinet Order as prescribed in Article 37-14-2, paragraph (5), item (ii) of the Act is the relationship with the merging corporation prescribed in the same item involved in a merger whereby the

foreign corporation holds the whole of the issued shares of or capital contributions to the merging corporation (excluding the shares of the merging corporation held by itself; referred to as the "issued shares, etc." in the following paragraph and paragraph (8)), if the relationship exists immediately before the merger.

- (7) The relationship specified by Cabinet Order as prescribed in Article 37-14-2, paragraph (5), item (iv) of the Act is the relationship with a succeeding corporation in a company split prescribed in item (iv) of the same paragraph involved in a split-off-type company split prescribed in Article 2, item (xii)-9 of the Corporation Tax Act whereby the foreign corporation holds the whole of the issued shares, etc. of the succeeding corporation in a company split, if the relationship exists immediately before the split-off-type company split.
- (8) The relationship specified by Cabinet Order as prescribed in Article 37-14-2, paragraph (5), item (vi) of the Act is the relationship with the wholly owning parent corporation in a share exchange prescribed in the same item pertaining to a share exchange whereby the foreign corporation holds the whole of the issued shares, etc. of the wholly owning parent corporation in a share exchange, if the relationship exists immediately before the share exchange.
- (9) A nonresident having permanent establishments in Japan who receives the delivery of the Parent Corporation's Shares Managed in a Domestic Business in the relevant year must submit a document stating the issue and number of the Parent Corporation's Shares Managed in a Domestic Business that they hold as of December 31 of the year containing the day on which they receive the delivery thereof, as well as other particulars specified by Ministry of Finance Order, to the competent district director of the tax office having jurisdiction over the person's place for tax payment, no later than March 15 of the year following the relevant year.
- (10) With regard to the application of the provisions of Article 25-8, paragraph (11) in the case where a nonresident having permanent establishments in Japan, who is subject to the provisions of Article 37-14-2, paragraph (4) of the Act with regard to the Parent Corporation's Shares Managed in a Domestic Business, files a final return form in the relevant year, the term "detailed statement concerning..." in Article 25-8, paragraph (11) is deemed to be replaced with "document stating the details of..., and other particulars specified by Ministry of Finance Order".
- (11) Where a nonresident, with regard to the shares they hold, receives the delivery of a foreign merging parent corporation's shares prescribed in Article 37-14-2, paragraph (1) as a result of the specified merger prescribed in paragraph (5), item (i) of the same Article of a domestic corporation that issued those shares held by them, with regard to the calculation of the fair value of the foreign merging parent corporation's shares, the provisions of Article 112,

- paragraph (1) of the Order for Enforcement of the Income Tax Act in the case of making a calculation in accordance with the provisions of the same paragraph pursuant to the provisions of Article 165 of the Income Tax Act do not apply.
- (12) Where a nonresident, with regard to the shares they hold, receives the delivery of shares of a foreign succeeding parent corporation in a company split prescribed in Article 37-14-2, paragraph (2) as a result of a specified split-off-type company split prescribed in paragraph (5), item (iii) of the same Article which is effected by a domestic corporation that issued those shares held by them, with regard to the calculation of the fair value of the shares of the foreign succeeding parent corporation in a company split, the provisions of Article 113, paragraph (1) of the Order for Enforcement of the Income Tax Act in the case of making a calculation in accordance with the provisions of the same paragraph pursuant to the provisions of Article 165 of the Income Tax Act do not apply.
- (13) Where a nonresident, with regard to the shares they hold, has transferred the shares to the wholly owning parent corporation in a share exchange prescribed in Article 2, item (xii)-6-4 of the Corporation Tax Act as a result of a specified share exchange prescribed in Article 37-14-2, paragraph (5), item (v) of the Act which is effected by a domestic corporation that issued those shares held by them, and received the delivery of shares of a fully controlling foreign parent corporation in a share exchange prescribed in article 37-14-2, paragraph (3) of the Act, with regard to the calculation of the amount of business income, the amount of capital gains, or the amount of miscellaneous income pertaining to the fully controlling foreign parent corporation in a share exchange, the provisions of Article 167-7, paragraph (3) of the Order for Enforcement of the Income Tax Act in the case of making a calculation in accordance with the provisions of the same paragraph pursuant to the provisions of Article 165 of the Income Tax Act do not apply.
- (14) With regard to the application of the provisions of Article 280 and Article 291 of the Order for Enforcement of the Income Tax Act in the cases prescribed in paragraph (11) and paragraph (12): the phrase "or paragraph (4) ("in Article 280, paragraph (2) of the same Order is deemed to be replaced with "or paragraph (4) ("; the phrase "or the items of paragraph (4)" in the same paragraph is deemed to be replaced with "or the items of paragraph (4)"; the phrase "or extinguishment of rights..." in the same paragraph is deemed to be replaced with "or extinguishment of rights..., or transfer or extinguishment of rights corresponding to the value of the shares of the foreign merging parent corporation prescribed in Article 37-14-2, paragraph (1) (Special Provisions for Taxation in Cases of Receiving Delivery of Foreign Parent Corporation's Shares as a Result of Merger) of the Act on Special Measures Concerning Taxation or shares of the foreign succeeding parent corporation in a company split

prescribed in paragraph (2) of the same Article, with regard to the shares held as prescribed in paragraph (1) or (2) of the same Article based on the specified merger prescribed in paragraph (1) of the same Article or the specified split-off-type company split prescribed in paragraph (2) of the same Article, which has been the cause of the delivery of the shares of the foreign merging parent corporation or the shares of the foreign succeeding parent corporation in a company split, in the case where the amount equivalent to the value is deemed to be revenue from capital gains, etc. from shares, etc. prescribed in Article 37-10, paragraph (1) of the same Act pursuant to the provisions of Article 37-14-2, paragraph (1) or paragraph (2) of the same Act"; the phrase "Article 280, paragraph (2)" in Article 291, paragraph (1), item (iii) of the same Order is deemed to be replaced with "Article 280, paragraph (2) whose terms and phrases are replaced pursuant to Article 25-14, paragraph (14) (Special Provisions for Taxation in Cases of Receiving Delivery of Foreign Parent Corporation's Shares as a Result of Merger) of the Order for Enforcement of the Act on Special Measures Concerning Taxation"; the phrase "split-off-type company split (" in paragraph (7), item (i) of the same Article is deemed to be replaced with "split-off-type company split (limited to a specified split-off-type company split prescribed in Article 37-14-2, paragraph (5), item (iii) (Special Provisions for Taxation in Cases of Receiving Foreign Parent Corporation's Shares as a Result of Merger) of the Act on Special Measures Concerning Taxation."; the phrase "through a split-off-type merger..., which falls under any of the following cases of company splits, the delivery of shares of a succeeding corporation in a company split prescribed in Article 2, item (xii)-3 of the same Act (hereinafter referred to as a "Succeeding Corporation in a Company Split" in this item), shares of a succeeding parent corporation in a company split prescribed in Article 113, paragraph (1) (Acquisition Cost for Shares Acquired through Split-Off-Type Company Split) (hereinafter referred to as a "Succeeding Parent Corporation in a Company Split" in this item) or other assets" in the same item is deemed to be replaced with "through a split-off-type merger, the delivery of shares of a foreign Succeeding Parent Corporation in a Company Split prescribed in paragraph (2) of the same Article"; and the phrase "paragraph (2) of the same Article" in the same item is deemed to be replaced with "Article 113, paragraph (2) (Acquisition Cost of Shares Acquired Through Split-Off-Type Company Split)".

(15) Where the provisions of Article 37-14-2, paragraphs (1) through (3) apply, the following provisions apply:

(i) with regard to the application of the provisions of Article 19-3, paragraph (9), the phrase "shares of a merging parent corporation" in the same paragraph is deemed to be replaced with "shares of a merging parent corporation (excluding shares of a foreign merging parent corporation



prescribed in Article 37-14-2, paragraph (1) of the Act pertaining to the specified merger prescribed in paragraph (5), item (i) of the same Article)"; the phrase "shares of a succeeding parent corporation in a company split" in the same paragraph is deemed to be replaced with "shares of a succeeding parent corporation in a company split (excluding shares of a foreign succeeding parent corporation in a company split prescribed in article 37-14-2, paragraph (2) of the Act pertaining to the specified split-off-type company split prescribed in paragraph (5), item (iii) of the same Article)"; and the phrase "shares of a corporation... paragraph (2) of the same Article" in the same paragraph is deemed to be replaced with "shares of a corporation (excluding shares of a fully controlling foreign parent corporation in a share exchange prescribed in Article 37-14-2, paragraph (3) of the Act that are delivered from the wholly owning parent corporation in a share exchange as a result of a specified share exchange prescribed in paragraph (5), item (v) of the same Article) ... Article 57-4, paragraph (2) of the Income Tax Act";

(ii) with regard to the application of the provisions of Article 25-8-2, paragraph (3), the phrase "or paragraph (4)" in the same paragraph is deemed to be replaced with "or paragraph (4)"; the phrase "or the items of paragraph (4)" in the same paragraph is deemed to be replaced with "or the items of paragraph (4)"; and the phrase "or extinguishment of rights..." in the same paragraph is deemed to be replaced with "or extinguishment of rights..., or transfer or extinguishment of rights corresponding to the value of the shares of the foreign merging parent corporation prescribed in Article 37-14-2, paragraph (1) of the Act or shares of the foreign succeeding parent corporation in a company split prescribed in paragraph (2) of the same Article, with regard to the shares held as prescribed in paragraph (1) or (2) of the same Article based on the specified merger prescribed in paragraph (1) of the same Article or the specified split-off-type company split prescribed in paragraph (2) of the same Article, which has been the cause of the delivery of the shares of the foreign merging parent corporation or the shares of the foreign succeeding parent corporation in a company split, in the case where the amount equivalent to the value is deemed to be revenue from capital gains, etc. from shares, etc. prescribed in Article 37-10, paragraph (1) of the same Act pursuant to the provisions of Article 37-14-2, paragraph (1) or paragraph (2) of the same Act";

(iii) with regard to the application of the provisions of Article 25-10, the phrase "acquisition" in paragraph (4) of the same Article is deemed to be replaced with "acquisition (excluding the acquisition of shares of a foreign succeeding parent corporation in a company split prescribed in Article 37-14-2, paragraph (2) of the Act as a result of a specified split-off-type company split prescribed in paragraph (5), item (iii) of the same Article)"; the phrase "share

exchange" in paragraph (5), item (i) of the same Article is deemed to be replaced with "share exchange (excluding the specified share exchange prescribed in Article 37-14-2, paragraph (2), item (v) of the Act in the case of acquiring shares of a fully controlling foreign parent corporation in a share exchange prescribed in paragraph (3) of the same Article as a result of the specified share exchange)"; the phrase "Article 37-11-2, paragraph (2), item (ii) of the Act" in paragraph (6), item (i) of the same Article is deemed to be replaced with "Article 37-11-2, paragraph (2), item (ii) of the Act whose terms and phrase are replaced pursuant to the provisions of Article 37-14-2, paragraph (6), item (i) of the Act"; the phrase "paragraph (4)" in item (ii) of the same paragraph is deemed to be replaced with "paragraph (4) whose terms and phrases are replaced pursuant to the provisions of Article 25-14, paragraph (15), item (iii)"; and the phrase "items of the preceding paragraph" in item (iii) of the same paragraph is deemed to be replaced with "items of the preceding paragraph whose terms and phrases are replaced pursuant to the provisions of Article 25-14, paragraph (15), item (iii)";

(iv) with regard to the application of the provisions of Article 25-10-2, the phrase "item (x) of the following paragraph" in paragraph (14) of the same Article is deemed to be replaced with "item (x) of the following paragraph whose terms and phrases are replaced pursuant to the provisions of Article 25-14, paragraph (15), item (iv)"; the phrase "shares of a merging parent corporation" in paragraph (15), item (vii) of the same Article is deemed to be replaced with "shares of a merging parent corporation (excluding shares of a foreign merging parent corporation prescribed in Article 37-14-2, paragraph (1) of the Act to be acquired as a result of a specified merger prescribed in paragraph (5), item (i) of the same Article; the same applies in this item)"; the phrase "shares of a succeeding parent corporation in a company split" in item (ix) of the same paragraph is deemed to be replaced with "shares of a succeeding parent corporation in a company split (excluding shares of a foreign succeeding parent corporation in a company split prescribed in Article 37-14-2, paragraph (2) of the Act to be acquired as a result of a specified split-off-type company split prescribed in paragraph (5), item (iii) of the same Article; the same applies in this item)"; the phrase "shares... or ...in paragraph (2) of the same Article" in item (x) of the same paragraph is deemed to be replaced with "shares (excluding shares of a fully controlling foreign parent corporation in a share exchange prescribed in Article 37-14-2, paragraph (3) of the Act to be acquired as a result of a specified share exchange prescribed in paragraph (5), item (v) of the Act) ... or ... Article 57-4, paragraph (2) of the Income Tax Act"; and the phrase "paragraph (15), item (v)" in paragraph (20) of the same Article is deemed to be replaced with "paragraph (15), item (v) whose terms and phrases are replaced pursuant to

- the provisions of Article 25-14, paragraph (15), item (iv)";
- (v) with regard to the application of the provisions of Article 25-10-5, paragraph (3), the phrase "Article 25-10-2, paragraph (15), item (vii)" in item (iii) of the same paragraph is deemed to be replaced with "Article 25-10-2, paragraph (15), item (vii) whose terms and phrases are replaced pursuant to the provisions of Article 25-14, paragraph (15) item (iv)"; the phrase "Article 25-10-2, paragraph (15), item (ix)" in item (v) of the same paragraph is deemed to be replaced with "Article 25-10-2, paragraph (15), item (ix) whose terms and phrases are replaced pursuant to the provisions of Article 25-14, paragraph (15), item (iv)"; and the phrase "Article 25-10-2, paragraph (15), item (x)" in item (vi) of the same paragraph is deemed to be replaced with "Article 25-10-2, paragraph (15), item (x) whose terms and phrases are replaced with the provisions of Article 25-14, paragraph (15), item (iv)";
- (vi) with regard to the application of the provisions of Article 25-11-2, the phrase "Article 37-12-2, paragraph (2) of the Act" in paragraph (1), item (i) of the same Article is deemed to be replaced with "Article 37-12-2, paragraph (2) of the Act whose terms and phrases are replaced pursuant to the provisions of Article 37-14-2, paragraph (6), item (ii) of the Act"; and the phrase "items of paragraph (1)" in paragraph (9) of the same Article is deemed to be replaced with "items of paragraph (1) whose terms and phrases are replaced pursuant to the provisions of Article 25-14, paragraph (15), item (vi)";
- (vii) with regard to the application of the provisions of Article 25-12-2, paragraph (9), the phrase "Article 37-12-2, paragraph (2) of the Act" in the same paragraph is deemed to be replaced with "Article 37-12-2, paragraph (2) of the Act whose terms and phrase are replaced pursuant to the provisions of Article 37-14-2, paragraph (6), item (ii) of the Act".
- (16) With regard to the application of the provisions of Article 345 of the Order for Enforcement of the Income Tax Act in the case where a nonresident receives the delivery of shares of a foreign merging parent corporation or shares of a foreign succeeding parent corporation in a company split prescribed in Article 37-14-2, paragraph (5), item (ii) or item (iv) as a result of a specified merger or specified split-off-type company split prescribed item (i) or item (iii) of the same paragraph, the phrase "other than shares of or capital contributions to" in paragraph (1), item (i) of the same Article is deemed to be replaced with "other than shares of or capital contributions to (excluding shares of a foreign merging parent corporation prescribed in Article 37-14-2, paragraph (5), item (ii) (Special Provisions for Taxation in Cases of Delivery of Receiving Foreign Parent Corporation's Shares as a Result of Merger) of the Act on Special Measures Concerning Taxation)"; and the phrase "other than shares of or capital contributions to" in item (ii) of the same paragraph is

deemed to be replaced with "other than shares of or capital contributions to (excluding shares of a foreign succeeding parent corporation in a company split prescribed in Article 37-14-2, paragraph (5), item (iv) of the Act on Special Measures Concerning taxation)".

(Special Provisions for Taxation on Shareholders in Cases of Specified Merger)

Article 25-14-2 (1) Where an individual, with regard to the shares they hold (including capital contributions; hereinafter the same applies through to paragraph (3)), receives the delivery of shares of a foreign merging parent corporation prescribed in Article 37-14-3, paragraph (1) of the Act as a result of the specified non-qualified merger, as prescribed in the same paragraph, of a domestic corporation that issued those shares held by them, when the shares of the foreign merging parent corporation fall under the category of shares of a specified foreign corporation with less tax burden (meaning the foreign corporation with less tax burden prescribed in Article 68-2-3, paragraph (5), item (i) of the Act; the same applies in the following paragraph and paragraph (3)), with regard to the calculation of the fair value of the shares of the foreign merging parent corporation, the provisions of Article 112, paragraph (1) of the Order for Enforcement of the Income Tax Act (including the case of making the calculation in accordance with the provisions of Article 165 of the Income Tax Act) do not apply.

(2) Where an individual, with regard to the shares they hold, receives the delivery of shares of a foreign succeeding parent corporation in a company split prescribed in Article 37-14-3, paragraph (2) of the Act as a result of a specified non-qualified split-off-type company split prescribed in the same paragraph which is effected by a domestic corporation that issued those shares held by them, when the shares of the foreign succeeding parent corporation in a company split fall under the category of shares of a specified foreign corporation with less tax burden, with regard to the calculation of the fair value of the shares of the foreign succeeding parent corporation, the provisions of Article 113, paragraph (1) of the Order for Enforcement of the Income Tax Act (including the case of making the calculation in accordance with the provisions of Article 165 of the Income Tax Act) do not apply.

(3) Where an individual, with regard to the shares they hold, has transferred the shares to a wholly owning parent corporation in a share exchange prescribed in Article 2, item (xii)-6-4 of the Corporation Tax Act as a result of a specified non-qualified share exchange prescribed in Article 37-14-3, paragraph (3) of the Act which is effected by a domestic corporation that issued the shares, and received the delivery of shares of a fully controlling foreign parent corporation in a share exchange prescribed in the same paragraph, when the shares of the fully controlling foreign parent corporation in a share exchange fall under the

category of shares of a specified foreign corporation with less tax burden, with regard to the calculation of the amount of business income, the amount of capital gains, or the amount of miscellaneous income pertaining to the shares of the fully controlling foreign parent corporation, the provisions of Article 167-7, paragraph (3) of the Order for Enforcement of the Income Tax Act (including the case of making the calculation in accordance with the provisions of Article 165 of the Income Tax Act) do not apply.

- (4) With regard to the application of the provisions of Article 280 and Article 291 of the Order for Enforcement of the Income Tax Act in the cases prescribed in paragraph (11) and paragraph (12): the phrase "or paragraph (4) ("in Article 280, paragraph (2) of the same Order is deemed to be replaced with "or paragraph (4) ("; the phrase "or the items of paragraph (4)" in the same paragraph is deemed to be replaced with "or the items of paragraph (4)"; the phrase "or extinguishment of rights..." in the same paragraph is deemed to be replaced with "or extinguishment of rights..., or transfer or extinguishment of rights corresponding to the value of the shares of the foreign merging parent corporation prescribed in Article 37-14-3, paragraph (1) (Special Provisions for Taxation on Shareholders in Cases of Specified Merger) of the Act on Special Measures Concerning Taxation or shares of the foreign succeeding parent corporation in a company split prescribed in paragraph (2) of the same Article, with regard to the shares held as prescribed in paragraph (1) or (2) of the same Article based on the specified non-qualified merger prescribed in paragraph (1) of the same Article or the specified non-qualified split-off-type company split prescribed in paragraph (2) of the same Article, which has been the cause of the delivery of the shares of the foreign merging parent corporation or the shares of the foreign succeeding parent corporation in a company split, in the case where the amount equivalent to the value is deemed to be revenue from capital gains, etc. from shares, etc. prescribed in Article 37-10, paragraph (1) of the same Act pursuant to the provisions of Article 37-14-3, paragraph (1) or paragraph (2) of the same Act"; the phrase "Article 280, paragraph (2)" in Article 291, paragraph (1), item (iii) of the same Order is deemed to be replaced with "Article 280, paragraph (2) whose terms and phrases are replaced pursuant to Article 25-14-2, paragraph (14) (Special Provisions for Taxation on Shareholders in Cases of Specified Merger) of the Order for Enforcement of the Act on Special Measures Concerning Taxation"; the phrase "split-off-type company split (" in paragraph (7), item (i) of the same Article is deemed to be replaced with "split-off-type company split (limited to a specified non-qualified split-off-type company split prescribed in Article 37-14-3, paragraph (2), item (iii) (Special Provisions for Taxation on Shareholders in Cases of Specified Merger) of the Act on Special Measures Concerning Taxation."; the phrase "through a split-off-type merger..., which falls under any of the following cases

of company splits, the delivery of shares of a succeeding corporation in a company split prescribed in Article 2, item (xii)-3 of the same Act (hereinafter referred to as a "Succeeding Corporation in a Company Split" in this item), shares of a succeeding parent corporation in a company split prescribed in Article 113, paragraph (1) (Acquisition Cost for Shares Acquired through Split-Off-Type Company Split) (hereinafter referred to as a "Succeeding Parent Corporation in a Company Split" in this item) or other assets" in the same item is deemed to be replaced with "through a split-off-type merger, the delivery of shares of a foreign Succeeding Parent Corporation in a Company Split prescribed in Article 37-14-3, paragraph (2) of the same Act which fall under the category of shares of a foreign corporation with less tax burden prescribed in Article 68-2-3, paragraph (5), item (i) (Special Provisions Concerning the Scope of Qualified Merger) of the same Act"; and the phrase "paragraph (2) of the same Article" in the same item is deemed to be replaced with "Article 113, paragraph (2) (Acquisition Cost of Shares Acquired Through Split-Off-Type Company Split)".

(5) Where the provisions of Article 37-14-3, paragraphs (1) through (3) apply, the following provisions apply:

(i) with regard to the application of the provisions of Article 19-3, paragraph (9), the phrase "shares of a merging parent corporation" in the same paragraph is deemed to be replaced with "shares of a merging parent corporation (excluding share of a foreign merging parent corporation prescribed in Article 37-14-3, paragraph (1) of the Act which fall under the category of shares of a specified foreign corporation with less tax burden (meaning a specified foreign corporation with less tax burden prescribed in article 68-2-3, paragraph (5), item (i) of the Act; hereinafter the same applies through to Article 25-10-2) pertaining to a specified non-qualified merger prescribed in Article 37-14-3, paragraph (1) of the Act)"; the phrase "shares of a succeeding parent corporation in a company split" in the same paragraph is deemed to be replaced with "shares of a succeeding parent corporation in a company split (excluding shares of a foreign succeeding parent corporation in a company split prescribed in Article 37-14-3, paragraph (2) of the Act which fall under the category of shares of a specified foreign corporation with less tax burden pertaining to a specified non-qualified split-off-type company split prescribed in the same paragraph)"; and the phrase "shares of a corporation... paragraph (2) of the same Article" in the same paragraph is deemed to be replaced with "shares of a corporation (excluding shares of a fully controlling foreign parent corporation in a share exchange prescribed in Article 37-14-3, paragraph (3) of the Act which fall under the category of shares of a specified foreign corporation with less tax burden, which are delivered from a wholly owning parent corporation in a share exchange as a

- result of a specified share exchange prescribed in the same paragraph), ... Article 57-4, paragraph (2) of the Income Tax Act";
- (ii) with regard to the application of the provisions of Article 25-8-2, paragraph (3), the phrase "or paragraph (4)" in the same paragraph is deemed to be replaced with "or paragraph (4)"; the phrase "or the items of paragraph (4)" in the same paragraph is deemed to be replaced with "or the items of paragraph (4)"; and the phrase "or extinguishment of rights..." in the same paragraph is deemed to be replaced with "or extinguishment of rights..., or transfer or extinguishment of rights corresponding to the value of the shares of the foreign merging parent corporation prescribed in Article 37-14-3, paragraph (1) of the Act or shares of the foreign succeeding parent corporation in a company split prescribed in paragraph (2) of the same Article, with regard to the shares held as prescribed in paragraph (1) or (2) of the same Article based on the specified non-qualified merger prescribed in paragraph (1) of the same Article or the specified non-qualified split-off-type company split prescribed in paragraph (2) of the same Article, which has been the cause of the delivery of the shares of the foreign merging parent corporation or the shares of the foreign succeeding parent corporation in a company split, in the case where the amount equivalent to the value is deemed to be revenue from capital gains, etc. from shares, etc. prescribed in Article 37-10, paragraph (1) of the same Act pursuant to the provisions of Article 37-14-3, paragraph (1) or paragraph (2) of the same Act";
- (iii) with regard to the application of the provisions of Article 25-10, the phrase "acquisition" in paragraph (4) of the same Article is deemed to be replaced with "acquisition (excluding the acquisition of shares of a foreign succeeding parent corporation in a company split prescribed in Article 37-14-3, paragraph (2) of the Act, which fall under the category of shares of a specified foreign corporation with less tax burden, as a result of a specified non-qualified split-off-type company split prescribed in the same paragraph)"; the phrase "share exchange" in paragraph (5), item (i) of the same Article is deemed to be replaced with "share exchange (excluding the specified share exchange prescribed in Article 37-14-3, paragraph (2), item (v) of the Act in the case of acquiring shares of a fully controlling foreign parent corporation in a share exchange prescribed in the same paragraph, which fall under the category of shares of a specified foreign corporation with less tax burden, as a result of the specified share exchange)"; the phrase "Article 37-11-2, paragraph (2), item (ii) of the Act" in paragraph (6), item (i) of the same Article is deemed to be replaced with "Article 37-11-2, paragraph (2), item (ii) of the Act whose terms and phrase are replaced pursuant to the provisions of Article 37-14-3, paragraph (4), item (i) of the Act"; the phrase "paragraph (4)" in item (ii) of the same paragraph is deemed to be replaced

- with "paragraph (4) whose terms and phrases are replaced pursuant to the provisions of Article 25-14-2, paragraph (5), item (iii)"; and the phrase "items of the preceding paragraph" in item (iii) of the same paragraph is deemed to be replaced with "items of the preceding paragraph whose terms and phrases are replaced pursuant to the provisions of Article 25-14-2, paragraph (5), item (iii)";
- (iv) with regard to the application of the provisions of Article 25-10-2, the phrase "item (x) of the following paragraph" in paragraph (14) of the same Article is deemed to be replaced with "item (x) of the following paragraph whose terms and phrases are replaced pursuant to the provisions of Article 25-14-2, paragraph (5), item (iv)"; the phrase "shares of a merging parent corporation" in paragraph (15), item (vii) of the same Article is deemed to be replaced with "shares of a merging parent corporation (excluding shares of a foreign merging parent corporation prescribed in Article 37-14-3, paragraph (1) of the Act, which fall under the category of shares of a specified foreign corporation with less tax burden, to be acquired as a result of a specified non-qualified merger prescribed in the same paragraph; the same applies in this item)"; the phrase "shares of a succeeding parent corporation in a company split" in item (ix) of the same paragraph is deemed to be replaced with "shares of a succeeding parent corporation in a company split (excluding shares of a foreign succeeding parent corporation in a company split prescribed in Article 37-14-3, paragraph (2) of the Act, which fall under the category of shares of a specified foreign corporation with less tax, to be acquired as a result of a specified non-qualified split-off-type company split prescribed in the same paragraph; the same applies in this item)"; the phrase "shares... or ...in paragraph (2) of the same Article" in item (x) of the same paragraph is deemed to be replaced with "shares (excluding shares of a fully controlling foreign parent corporation in a share exchange prescribed in Article 37-14-3, paragraph (3) of the Act, which fall under the category of shares of a specified foreign corporation with less tax, to be acquired as a result of a specified non-qualified share exchange prescribed in the same paragraph) ... or ... Article 57-4, paragraph (2) of the Income Tax Act"; and the phrase "paragraph (15), item (v)" in paragraph (20) of the same Article is deemed to be replaced with "paragraph (15), item (v) whose terms and phrases are replaced pursuant to the provisions of Article 25-14-2, paragraph (5), item (iv)";
- (v) with regard to the application of the provisions of Article 25-10-5, paragraph (3), the phrase "Article 25-10-2, paragraph (15), item (vii)" in item (iii) of the same paragraph is deemed to be replaced with "Article 25-10-2, paragraph (15), item (vii) whose terms and phrases are replaced pursuant to the provisions of Article 25-14-2, paragraph (5), item (iv)"; the phrase



- "Article 25-10-2, paragraph (15), item (ix)" in item (v) of the same paragraph is deemed to be replaced with "Article 25-10-2, paragraph (15), item (ix) whose terms and phrases are replaced pursuant to the provisions of Article 25-14-2, paragraph (5), item (iv)"; and the phrase "Article 25-10-2, paragraph (15), item (x)" in item (vi) of the same paragraph is deemed to be replaced with "Article 25-10-2, paragraph (15), item (x) whose terms and phrases are replaced with the provisions of Article 25-14-2, paragraph (5), item (iv)";
- (vi) with regard to the application of the provisions of Article 25-11-2, the phrase "Article 37-12-2, paragraph (2) of the Act" in paragraph (1), item (i) of the same Article is deemed to be replaced with "Article 37-12-2, paragraph (2) of the Act whose terms and phrases are replaced pursuant to the provisions of Article 37-14-3, paragraph (4), item (ii) of the Act"; and the phrase "items of paragraph (1)" in paragraph (9) of the same Article is deemed to be replaced with "items of paragraph (1) whose terms and phrases are replaced pursuant to the provisions of Article 25-14-2, paragraph (5), item (vi)";
- (vii) with regard to the application of the provisions of Article 25-12-2, paragraph (9), the phrase "Article 37-12-2, paragraph (2) of the Act" in the same paragraph is deemed to be replaced with "Article 37-12-2, paragraph (2) of the Act whose terms and phrases are replaced pursuant to the provisions of Article 37-14-3, paragraph (4), item (ii) of the Act".
- (6) With regard to the application of the provisions of Article 345 of the Order for Enforcement of the Income Tax Act in the case where the provisions of Article 37-14-3, paragraph (1) or (2) apply, the phrase "other than shares of or capital contributions to" in paragraph (1), item (i) of the same Article is deemed to be replaced with "other than shares or capital contributions to (excluding shares of a foreign merging parent corporation prescribed in Article 37-14-3, paragraph (1) (Special Provisions for Taxation on Shareholders in Cases of Specified Merger) of the Act on Special Measures Concerning Taxation)"; and the phrase "other than shares of or capital contributions to" in item (ii) of the same paragraph is deemed to be replaced with "other than shares of or capital contributions to (excluding shares of a foreign succeeding parent corporation in a company split prescribed in Article 37-14-3, paragraph (2) of the Act on Special Measures Concerning taxation)".

#### **Section 8-4 Special Provisions for Taxation on Income of Specified Foreign Subsidiary Companies Related to Residents**

- Article 25-19 (1) The affiliated foreign company specified by Cabinet Order prescribed in Article 40-4, paragraph (1) of the Act is any of the following:
- (i) an affiliated foreign company that has its head office or principal office in a

- state or territory where there are no taxes imposed on corporate income (meaning an affiliated foreign company prescribed in Article 40-4, paragraph (2), item (i) of the Act; hereinafter the same applies in this Article);
- (ii) an affiliated foreign company whose tax imposed on its income for the relevant business year (meaning a business year prescribed in Article 2, paragraph (2), item (xix) of the Act; hereinafter the same applies in this Section) is 25 percent or less of the income.
- (2) Whether or not an affiliated foreign company falls under the category of an affiliated foreign company set forth in item (ii) of the preceding paragraph is to be determined as specified as follows:
- (i) the amount of income set forth in item (ii) of the preceding paragraph is the amount obtained by adding the amount of income calculated pursuant to the provisions of the laws and regulations concerning foreign corporation taxes (meaning foreign corporation taxes prescribed in Article 69, paragraph (1) of the Corporation Tax Act; hereinafter the same applies in this paragraph) of the state or territory where the affiliated foreign company's head office or principal office is located (hereinafter referred to as the "State of the Head Office" in this Section) (where there are two or more laws and regulations concerning the foreign corporation taxes, pursuant to the provisions of the principal ones; hereinafter referred to as the "Laws and Regulations of the State of the Head Office" in this paragraph) with regard to the affiliated foreign company's income in its settlement of accounts for the relevant business year and the sum of the amounts listed in (a) to (e) pertaining to the calculated amount of income and then deducting therefrom the amount listed in (f) pertaining to the calculated amount of income:
- (a) the amount of income which is not to be included in the foreign corporation tax base under the laws and regulations of the State of the Head Office (excluding the amounts listed as follows):
1. the amount listed in Article 23, paragraph (1), item (i) of the Corporation Tax Act to be received from a corporation located in the State of the Head Office (including the amount of profit reserve prescribed in Article 2, paragraph (18) of the same Act to be reduced by reason of the delivery of money or any other assets on any of the grounds listed in the items of Article 24, paragraph (1) of the same Act; hereinafter referred to as the "Amount of a Dividend, etc." in this item and the following Article);
  2. the Amount of a Dividend, etc. to be received from a corporation located in a state or territory other than the State of the Head Office, which is not to be included in the foreign corporation tax base on condition that the ratio of the shares, etc. (meaning shares or capital contributions; hereinafter the same applies in this Section) held by the affiliated

foreign company out of the total number or total amount of that corporation's issued shares or capital contributions (excluding its own shares held by that corporation) (hereinafter referred to as the "Issued Shares, etc." in this Section) is not less than the ratio specified by the laws and regulations of the State of the Head Office;

- (b) the Amount of a Dividend, etc. that the affiliated foreign company pays and which is included in deductible expenses;
- (c) the amount of foreign corporation tax that the affiliated foreign company pays and which is included in deductible expenses;
- (d) the amount equivalent to the amount of reserve belonging to the reserve for casualty set forth in Article 57-5, paragraph (1) or Article 57-6, paragraph (1) of the Act (referred to as the "Insurance Reserve" in (e)) that the affiliated foreign company has saved and which is included in deductible expenses, which is not to be included in deductible expenses when the provisions of Article 57-5 or Article 57-6 of the Act are to be applied;
- (e) where the amount of the Insurance Reserve that has been saved by the affiliated foreign company and has been included in gross profits (limited to the Insurance Reserve that will be saved when the provisions of Article 57-5 or Article 57-6 of the Act are to be applied) does not reach the amount to be included in gross profits when these provisions are to be applied, the amount of the shortfall;
- (f) the amount of foreign corporation tax that is refunded to the affiliated foreign company and which is included in gross profits;
- (ii) the amount of tax set forth in item (ii) of the preceding paragraph is the sum of the amounts listed as follows:
  - (a) the amount of foreign corporation tax to be imposed on the amount of the affiliated foreign company's income in its settlement of accounts for the relevant business year in the State of the Head Office or in a state or territory other than the State of the Head Office (including the amount to be deducted from the foreign corporation tax in the State of the Head Office by deeming that the affiliated foreign company has paid the amount under the laws and regulations of the State of the Head Office and excluding the amount of foreign corporation tax to be imposed on the amount listed in (a), 2. of the preceding item);
  - (b) the amount of foreign corporation tax that has been reduced or exempted for the affiliated foreign company for the relevant business year in the State of the Head Office and which is deemed to have been paid by the affiliated foreign company pursuant to the provisions of the tax convention prescribed in Article 1-3, paragraph (1), item (ii);
- (iii) where foreign corporation tax rates in the State of the Head Office increase

- in accordance with the amount of income, the amount of foreign corporation tax set forth in (a) of the preceding item is to be the amount calculated based on the highest rates out of the tax rates;
- (iv) where the amount of income set forth in item (ii) of the preceding paragraph proves to be a loss, the amount of foreign corporation tax is to be determined based on the foreign corporation tax rate to be applied in the State of the Head Office to any income that arises from revenue pertaining to the affiliated foreign company's principal business (in the case where the revenue falls under the category of the amount listed in 1. or 2. of item (i), (a), revenue other than the revenue).
- (3) A nonresident who has a special relationship specified by Cabinet Order with a resident or domestic corporation prescribed in Article 40-4, paragraph (2), (i) of the Act is a nonresident listed as follows:
- (i) a relative of the resident;
  - (ii) a person in a relationship with the resident where a marital relationship is de facto, though a marriage has not been registered;
  - (iii) an employee of the resident;
  - (iv) a person other than those listed in the preceding three items who maintains their living by receiving money or any other assets from the resident;
  - (v) a relative of any of the persons listed in the preceding three items who depends on the person for their livelihood;
  - (vi) an officer of the domestic corporation (meaning an officer prescribed in Article 2, item (xv) of the Corporation Tax Act; hereinafter the same applies in this item and Article 25-21, paragraph (8) and paragraph (10)) and a person listed in the items of Article 72-3 of the Order for Enforcement of the Corporation Tax Act who is related to the officer.

(Calculation of Eligible Income of Specified Foreign Subsidiary Companies)

Article 25-20 (1) The amount of undistributed income calculated in accordance with the standards specified by Cabinet Order prescribed in Article 40-4, paragraph (2), item (ii) of the Act is the amount that remains after deducting the amount listed in Article 39-15, paragraph (1), item (iii) pertaining to the income of a specified foreign subsidiary company, etc. prescribed in Article 40-4, paragraph (1) of the Act (hereinafter referred to as a "Specified Foreign Subsidiary Company, etc." in this Article and paragraph (1) and paragraph (3) of the following Article) in its settlement of accounts for the relevant business year from the sum of the amount listed in Article 39-15, paragraph (1), item (i) and item (ii) and the amount listed in item (ii) of the same paragraph pertaining to the income (where the amount listed in item (i) of the same paragraph pertaining to the income is a loss, the amount of undistributed

income is the amount that remains after deducting the sum of the amount of loss and the amount listed in item (iii) of the same paragraph pertaining to the income from the amount listed in item (ii) of the same paragraph pertaining to the income).

- (2) Notwithstanding the provisions of the preceding paragraph, a resident listed in the items of Article 40-4, paragraph (1) of the Act may deem that the amount obtained by adding the amount of income calculated pursuant to the provisions of the laws and regulations concerning corporate income taxes in the State of the Head Office of a Specified Foreign Subsidiary Company, etc. (meaning taxes to be imposed based on the amount of the company's income in the State of the Head Office or in a state or territory other than the State of the Head Office or by local entities in those states or territories including the State of the Head Office (including taxes listed in the items of Article 141, paragraph (2) of the Order for Enforcement of the Corporation Tax Act to be imposed in those states or territories or by local entities of those states or territories) and taxes equivalent to incidental taxes to be imposed incidentally as prescribed in Article 2, item (xlv) of the Corporation Tax Act (excluding interest tax) and other taxes similar to the tax equivalent to the incidental taxes; hereinafter the same applies in this Article) (where there are two or more laws and regulations concerning the corporate income taxes, pursuant to the provisions of the principal ones; hereinafter referred to as the "Laws and Regulations of the State of the Head Office" in this paragraph), with regard to the income of the Specified Foreign Subsidiary Company, etc. in its settlement of accounts for the relevant business year (where the provisions of Article 66-4, paragraph (1) or Article 68-88, paragraph (1) of the Act are applied to a transaction between the Specified Foreign Subsidiary Company, etc. and a domestic corporation listed in the items of Article 66-6, paragraph (1) of the Act that relates to the Specified Foreign Subsidiary Company, etc., the amount of income calculated pursuant to the provisions of the Laws and Regulations of the State of the Head Office by deeming that the transaction was carried out at the arm's length price prescribed in those provisions), and the sum of the amounts listed in Article 39-15, paragraph (2), items (i) to (xiii) pertaining to the calculated amount of income and then deducting therefrom the sum of the amounts listed in items (xiv) to (xvi) of the same paragraph pertaining to the calculated amount of income (where the amount calculated pursuant to the provisions of the Laws and Regulations of the State of the Head Office proves to be a loss, the amount may be the amount that remains after deducting the sum of the amount of loss and the amounts listed in items (xiv) to (xvi) of the same paragraph pertaining to the calculated amount from the sum of the amounts listed in items (i) to (xiii) of the same paragraph pertaining to the calculated amount) may be the amount calculated in accordance with the

standards specified by Cabinet Order prescribed in Article 40-4, paragraph (2), (ii) of the Act.

(3) Where there is any amount of a deductible dividend, etc. (meaning the amount equivalent to the amount specified respectively in the following items for the category of cases listed in the relevant items; hereinafter the same applies in this paragraph) for the relevant business year of a Specified Foreign Subsidiary Company, etc. related to a resident listed in the items of Article 40-4, paragraph (1) of the Act, the amount calculated in accordance with the standards specified by Cabinet Order prescribed in Article 40-4, paragraph (2), item (ii) of the Act is the amount that remains after deducting the amount of a deductible dividend, etc. from the amount calculated pursuant to these provisions, notwithstanding the provisions of paragraph (1) or the preceding paragraph:

(i) where the Amount of a Dividend, etc. that the Specified Foreign Subsidiary Company, etc. receives from any other Specified Foreign Subsidiary Company, etc. related to the resident (hereinafter referred to as the "Other Specified Foreign Subsidiary Company, etc." in this item) in the relevant business year does not exceed the amount of a dividend payable corresponding to the capital contributions by the Specified Foreign Subsidiary Company, etc. out of the total amount of dividends payable by the relevant other Specified Foreign Subsidiary Company, etc. in the business year containing the base date for paying the dividend, etc. (hereinafter referred to as the "Base Business Year" in this paragraph) and the Base Business Year is the business year during which the taxable income prescribed in Article 40-4, paragraph (1) of the Act (hereinafter referred to as the "Taxable Income" in this Section) arises: The amount of the dividend, etc.;

(ii) where the Amount of a Dividend, etc. that the Specified Foreign Subsidiary Company, etc. receives from any other Specified Foreign Subsidiary Company, etc. related to the resident in the relevant business year exceeds the amount of a dividend payable corresponding to the capital contributions for the Base Business Year pertaining to the Amount of a Dividend, etc.: Where the amount of a dividend payable corresponding to the capital contributions for the relevant business year preceding the Base Business Year of the relevant other Specified Foreign Subsidiary Company, etc. is to be appropriated to the Amount of a Dividend, etc. in reverse chronological order and the Amount of a Dividend, etc. has been categorized for the relevant business year in accordance with the amount of a dividend payable corresponding to the capital contributions for the relevant business year, the sum of the Amount of a Dividend, etc. to be appropriated with the amount of a dividend payable corresponding to the capital contributions for the

business year during which the Taxable Income arises.

(4) In the preceding paragraph and this paragraph, the meanings of the terms set forth in the following items are as prescribed respectively in those items:

- (i) amount of dividend payable: The amount that remains after deducting the sum of the amounts listed in (d) and (e) pertaining to eligible income (meaning eligible income prescribed in Article 40-4, paragraph (2), item (ii) of the Act; hereinafter the same applies in this Section) of a specialized foreign subsidiary company, etc. for the relevant business year, from the amount calculated by adding the eligible income to the sum of the amounts listed in (a) to (c):
  - (a) the amount of a deductible dividend, etc. prescribed in the preceding paragraph to be deducted pursuant to the provisions of the same paragraph;
  - (b) in the case where the provisions of Article 66-4, paragraph (1) or Article 68-88, paragraph (1) of the Act are applied to a transaction with a domestic corporation listed in the items of Article 66-6, paragraph (1) of the Act pertaining to the Specified Foreign Subsidiary Company, etc., and the amount of income to be reduced pursuant to the provisions of paragraph (1) or paragraph (2) contains any amount that is not paid to the domestic corporation, the amount that is not paid;
  - (c) the amount that accounts for ten percent of the amount of expenses specified by Cabinet Order prescribed in Article 40-4, paragraph (2), item (ii) to be deducted pursuant to the provisions of the same item in which the terms and phrases are replaced pursuant to the provisions of paragraph (3) of the same Article;
  - (d) the amount payable due to the appropriation of surplus for the relevant business year (excluding the amount of corporate income tax and the Amount of a Dividend, etc.);
  - (e) the amount paid as the expenses for the relevant business year (excluding the amount of corporate income tax and the Amount of a Dividend, etc.) which was included in the amount of eligible income for the relevant business year, because the amount was not included in deductible expenses for calculating the amount of income pursuant to the provisions of paragraph (1) or paragraph (2) or was included in the amount of income pursuant to the provisions of the same paragraph;
- (ii) the amount of a dividend payable corresponding to the capital contributions: The amount obtained by multiplying the amount of a dividend payable by a Specified Foreign Subsidiary Company, etc. by the ratio of the number or the amount of the shares, etc. of the Specified Foreign Subsidiary Company, etc. that any other Specified Foreign Subsidiary Company, etc. (hereinafter referred to as the "Other Specified Foreign Subsidiary Company,

etc." in this item) holds out of the total Issued Shares, etc. of the Specified Foreign Subsidiary Company, etc. (where the Specified Foreign Subsidiary Company, etc. has issued the shares, etc. in which claims prescribed in Article 40-4, paragraph (1) of the Act (hereinafter referred to as "Claims" through to Article 25-23) with different contents are vested or the shares, etc. in which Claims with different contents are deemed to be substantially vested (referred to as the "shares, etc. in which different Claims are vested" in paragraph (2) of the following Article and Article 25-23, paragraph (1)), the ratio of the Amount of a Dividend, etc. that the relevant other Specified Foreign Subsidiary Company, etc. can receive based on the Claims out of the total amount of a dividend of surplus, etc.).

(5) The amount obtained as a result of an adjustment for the amount of loss and the base income amount prescribed in Article 40-4, paragraph (2), item (ii) of the Act is the amount that remains after deducting, from the base income amount, prescribed in the same item, of a Specified Foreign Subsidiary Company, etc. for the relevant business year (referred to as the "base income amount" in paragraph (7)), the sum of the amounts listed as follows (where the provisions of paragraph (3) of the same Article are applied, the amount obtained by adding the amount that accounts for ten percent of the amount of expenses specified by Cabinet Order prescribed in Article 40-4, paragraph (2), item (ii) of the Act in which the terms and phrases are replaced pursuant to the provisions of paragraph (3) of the same Article):

(i) the amount equivalent to the sum of the loss incurred in the business years that started within seven years prior to the first day of the relevant business year of the Specified Foreign Subsidiary Company, etc. (excluding the business years that started before April 1, 1978 and the business years during which the company did not fall under the category of specified foreign subsidiary companies, etc. (including specified foreign subsidiary companies, etc. prescribed in Article 60-6, paragraph (1) or Article 68-90, paragraph (1) of the Act)) (that loss excludes the amount deducted in the business years preceding the relevant business year pursuant to the provisions of this paragraph);

(ii) the amount of corporate income tax that the Specified Foreign Subsidiary Company, etc. is to pay in the relevant business year (where there is any amount of corporate income tax to be refunded in the relevant business year, the amount that remains after deducting the amount of corporate income tax to be refunded).

(6) The loss prescribed in item (i) of the preceding paragraph means the loss calculated where the provisions of paragraph (1), paragraph (2) or paragraph (3) are applied to the amount of income of a Specified Foreign Subsidiary Company, etc. in its settlement of accounts for the relevant business year.



- (7) When calculating the amount listed in Article 39-15, paragraph (1), item (i) with regard to the income of a Specified Foreign Subsidiary Company, etc. in its settlement of accounts for the relevant business year pursuant to the provisions of paragraph (1), if there is any amount to be included in deductible expenses in the relevant business year, pursuant to the provisions of Article 33 and Articles 42 to 53 of the Corporation Tax Act and the provisions of Article 43, Article 45-2, Article 52-2, Article 57-5, Article 57-6, Article 57-8, Articles 65-7 to 65-9 (limited to the part pertaining to item (xix) of the table in Article 65-7, paragraph (1) of the Act), Article 67-12, paragraph (2) and Article 67-13, paragraph (2) of the Act, whose provisions are to be applicable under the provisions of the same item, the amount is to be included in deductible expenses for calculating the base income amount for the relevant business year, only when detailed statements concerning the inclusion of the amount in deductible expenses are attached to a final return form; provided, however, that when a final return form has not been submitted or a final return form has been submitted without detailed statements concerning the inclusion of the amount in deductible expenses, the district director may, when they find that there was any compelling reason therefor, apply the provisions of the main clause of this paragraph, only when the detailed statements have been submitted.
- (8) Where a resident, who was subject to the provisions of paragraph (1) for calculating the amount of income of the Specified Foreign Subsidiary Company, etc. in its settlement of accounts for the relevant business year, seeks the application of paragraph (2) for calculating the amount of income of the Specified Foreign Subsidiary Company, etc. in its settlement of accounts for the relevant business year in years following the one to which the provisions of paragraph (1) have been applied, or where a resident, who was subject to the provisions of paragraph (2) for calculating the amount of income of the Specified Foreign Subsidiary Company, etc. in its settlement of accounts for the relevant business year, seeks the application of paragraph (1) for calculating the amount of income of the Specified Foreign Subsidiary Company, etc. in its settlement of accounts for the relevant business year in years following the one to which the provisions of paragraph (2) have been applied, they must receive approval from the competent district director having jurisdiction over their place for tax payment, in advance.

(Calculation of the Amount of Taxable Income of Specified Foreign Subsidiary Companies Related to Residents)

Article 25-21 (1) The amount calculated as specified by Cabinet Order prescribed in Article 40-4, paragraph (1) of the Act is the amount obtained by deducting the sum of the amounts listed in paragraph (4), item (i), (d) and (e) of the

preceding Article for the relevant business year from the amount of eligible income for the relevant business year of a specified foreign subsidiary company, etc. related to a resident listed in the items of the same paragraph and then multiplying the amount that remains after deduction by the ratio of the shares, etc. for considering the Claims held by the person out of the total Issued Shares, etc. of the specified foreign subsidiary company, etc. at the end of the relevant business year of the specified foreign subsidiary company, etc.

(2) In the preceding paragraph and this paragraph, the meanings of the terms set forth in the following items are as prescribed respectively in those items:

(i) the shares, etc. for considering the Claims held: The number or the amount adding together the number or the amount of the shares, etc. of a foreign corporation directly held by a resident (where the foreign corporation has issued the shares, etc. in which different Claims are vested, the number or the amount obtained by multiplying the Issued Shares, etc. of the foreign corporation by the ratio of the amount of a dividend of surplus, dividend of profit or distribution of surplus prescribed in Article 24, paragraph (1) of the Income Tax Act (hereinafter referred to as the "Dividend Surplus, etc." in this Section) that the resident can receive based on the Claims out of the total amount) and the shares, etc. for considering the Claims indirectly held;

(ii) the shares, etc. for considering the Claims indirectly held: The number or the amount of the shares, etc. obtained by multiplying the Issued Shares, etc. of a foreign corporation by the ratio specified respectively in the following items for the category of cases listed in the relevant items (where falling under both of the following cases, the sum of the ratios specified respectively as follows):

(a) where a resident holds the whole or a part of the Issued Shares, etc. of other foreign corporations which are shareholders, etc. (meaning shareholders, etc. prescribed in Article 2, item (xiv) of the Corporation Tax Act; hereinafter the same applies in this Article) of the foreign corporation (hereinafter those other foreign corporations are referred to as "Other Foreign Corporations" in (a)): The ratio obtained by multiplying the resident's ratio of shareholding (meaning the ratio of the number or the amount of the shares, etc. held by the shareholders, etc. out of the total Issued Shares, etc. of the corporation issuing the shares, etc. (where the issuing corporation has issued the shares, etc. in which different Claims are vested, the ratio of the amount of a Dividend Surplus, etc. that the shareholder, etc. can receive based on the Claims out of the total amount); hereinafter the same applies in this item) pertaining to the relevant Other Foreign Corporations by the relevant Other Foreign Corporations' ratio of shareholding pertaining to the foreign corporation (where there are two or more Other Foreign Corporations, the sum of the ratios calculated for each

- of them);
- (b) where a single foreign corporation or two or more foreign corporations intervene between the foreign corporation and any other foreign corporation (limited to any other foreign corporation the whole or a part of whose Issued Shares, etc. are held by a resident; hereinafter referred to as the "Other Foreign Corporation" in this paragraph) (hereinafter that intervening foreign corporation is referred to as a "capital contribution-related foreign corporation" in this paragraph) and the resident, the relevant Other Foreign Corporation, capital contribution-related foreign corporation and the foreign corporation have a linkage through holding the shares, etc.: The ratio obtained by multiplying the resident's ratio of shareholding pertaining to the relevant Other Foreign Corporation sequentially by the relevant Other Foreign Corporation's ratio of shareholding pertaining to the capital contribution-related foreign corporations, by the capital contribution-related foreign corporation's ratio of shareholding pertaining to other capital contribution-related foreign corporations, and by the capital contribution-related foreign corporation's ratio of shareholding pertaining to the foreign corporation (where there are two or more linkages, the sum of the ratios calculated for each of them).
- (3) The amount that is to be included in the necessary expenses for calculating the amount of miscellaneous income pertaining to the Taxable Income of a specified foreign subsidiary company to be included in the gross revenue pursuant to the provisions of Article 40-4, paragraph (1) of the Act is the sum of the amounts listed as follows (where the sum exceeds the amount deemed to be revenue pertaining to the miscellaneous income under the provisions of the same paragraph, the amount is that equivalent to the sum of the amounts deemed to be the revenue):
- (i) the sum of the interest on liabilities incurred by a resident in acquiring the shares, etc. of a specified foreign subsidiary company, etc. (including the shares, etc. of a foreign corporation pertaining to the shares, etc. held indirectly by the resident in the case where they hold indirectly the shares, etc. pertaining to the specified foreign subsidiary company, etc. (the shares, etc. held indirectly mean the number of shares or the amount of capital contributions of a foreign corporation specified by Cabinet Order as those held indirectly as prescribed in Article 40-4, paragraph (2), item (iii) of the Act) (the shares, etc. of a specified foreign subsidiary corporation are limited to those held by the resident and exclude those falling under the category of the shares, etc. of a specified foreign subsidiary company, etc. related to the resident); hereinafter the same applies in this item) which will be paid for a period of the year during which the resident held the shares, etc. of the specified foreign subsidiary company, etc.;

- (ii) the amount of foreign income tax prescribed in Article 222-2, paragraph (4), item (iii) of the Order for Enforcement of the Income Tax Act to be imposed based on the amount of a Dividend Surplus, etc. prescribed in the same item to be received from the specified foreign subsidiary company, etc. which will be paid for the relevant year.
- (4) The sum of the amounts listed in the items of the preceding paragraph which is included in the necessary expenses for calculating the amount of miscellaneous income pertaining to the Taxable Income pursuant to the provisions of the same paragraph is not to be included in the amount to be included in the necessary expenses for calculating the amount of business income or miscellaneous income and the amount of interest on liabilities prescribed in Article 24, paragraph (2) of the Income Tax Act which is deducted for calculating the amount of dividend income pursuant to the provisions of the same paragraph.
- (5) The number of shares or the amount of capital contributions of a foreign corporation specified by Cabinet Order as those held indirectly as prescribed in Article 40-4, paragraph (2), item (iii) of the Act is the number or the amount of the shares, etc. obtained by multiplying the Issued Shares, etc. of a foreign corporation by the ratio specified respectively in the following items for the category of cases listed in the relevant items (where falling under both of the following cases, the sum of the ratios specified respectively as follows):
- (i) where an individual or domestic corporation holds the whole or a part of the Issued Shares, etc. of other foreign corporations which are shareholders, etc. of the foreign corporation (hereinafter referred to as "Other Foreign Corporations" in this item): The ratio obtained by multiplying the ratio of shareholding (meaning the ratio of the number or the amount of the shares, etc. held by the shareholders, etc. out of the total Issued Shares, etc. of the corporation issuing the shares, etc.; hereinafter the same applies in this paragraph) of the individual or domestic corporation pertaining to the relevant Other Foreign Corporations by the relevant other foreign corporations' ratio of shareholding pertaining to the foreign corporation (where there are two or more other foreign corporations, the sum of the ratios calculated for each of them);
- (ii) where a single foreign corporation or two or more foreign corporations intervene between the foreign corporation and any other foreign corporation (limited to any other foreign corporation the whole or a part of whose Issued Shares, etc. are held by an individual or domestic corporation; hereinafter referred to as the "Other Foreign Corporation" in this paragraph) (hereinafter that intervening foreign corporation is referred to as a "capital contribution-related foreign corporation" in this paragraph) and the individual or domestic corporation, the relevant Other Foreign Corporation,

capital contribution-related foreign corporation(s) and the foreign corporation have a linkage through holding the shares, etc.: The ratio obtained by multiplying the ratio of shareholding of the individual or domestic corporation pertaining to the relevant Other Foreign Corporation sequentially by the relevant Other Foreign Corporation's ratio of shareholding pertaining to the capital contribution-related foreign corporations, by the capital contribution-related foreign corporation's ratio of shareholding pertaining to other capital contribution-related foreign corporations, and by the capital contribution-related foreign corporation's ratio of shareholding pertaining to the foreign corporation (where there are two or more linkages, the sum of the ratios calculated for each of them).

(6) The number of voting rights of a foreign corporation specified by Cabinet Order as being held indirectly as prescribed in Article 40-4, paragraph (2), item (iv) of the Act is the number of voting rights obtained by multiplying the total number of voting rights (meaning the voting rights prescribed in Article 40-4, paragraph (1), item (i), (a) of the Act; hereinafter the same applies in this paragraph) by the ratio specified respectively in the following items for the category of cases listed in the relevant items (where falling under both of the following cases, the sum of the ratios specified respectively as follows):

(i) where an individual or domestic corporation holds the whole or a part of the voting rights of other foreign corporations which are shareholders, etc. of the foreign corporation (hereinafter referred to as "Other Foreign Corporations" in this item): The ratio obtained by multiplying the ratio of voting rights (meaning the ratio of the number of voting rights held by the shareholders, etc. out of the total number; hereinafter the same applies in this paragraph) of the individual or domestic corporation pertaining to the relevant Other Foreign Corporations by the relevant Other Foreign Corporations' ratio of voting rights pertaining to the foreign corporation (where there are two or more Other Foreign Corporations, the sum of the ratios calculated for each of them);

(ii) where a single foreign corporation or two or more foreign corporations intervene between the foreign corporation and any other foreign corporation (limited to any other foreign corporation the whole or a part of whose voting rights are held by an individual or domestic corporation; hereinafter referred to as the "Other Foreign Corporation" in this paragraph) (hereinafter that intervening foreign corporation is referred to as a "capital contribution-related foreign corporation" in this paragraph) and the individual or domestic corporation, the Other Foreign Corporation, capital contribution-related foreign corporation(s) and the foreign corporation have a linkage through holding the voting rights: The ratio obtained by multiplying the ratio of voting rights of the individual or domestic corporation pertaining to

the relevant Other Foreign Corporation sequentially by the relevant Other Foreign Corporation's ratio of voting rights pertaining to the capital contribution-related foreign corporations, by the capital contribution-related foreign corporation's ratio of voting rights pertaining to other capital contribution-related foreign corporations, and by the capital contribution-related foreign corporation's ratio of voting rights pertaining to the foreign corporation (where there are two or more linkages, the sum of the ratios calculated for each of them).

(7) The amount of a Dividend Surplus, etc. specified by Cabinet Order as being receivable based on the Claims vested in the shares, etc. of a foreign corporation held indirectly as prescribed in Article 40-4, paragraph (2), item (v) of the Act is the amount of a Dividend Surplus, etc. obtained by multiplying the total amount of a Dividend Surplus, etc. receivable based on the Claims vested in the shares, etc. of a foreign corporation by the ratio specified respectively in the following items for the category of cases listed in the relevant items (where falling under both of the following cases, the sum of the ratios specified respectively as follows):

(i) where an individual or domestic corporation holds the whole or a part of the Claims vested in the shares, etc. of other foreign corporations which are shareholders, etc. of the foreign corporation (hereinafter referred to as "Other Foreign Corporations" in this item): The ratio obtained by multiplying the ratio of Claims (meaning the ratio of the amount of a Dividend Surplus, etc. receivable based on the Claims vested in the shares, etc. held by the shareholders, etc. out of the total amount; hereinafter the same applies in this paragraph) of the individual or domestic corporation pertaining to the relevant Other Foreign Corporations by the relevant Other Foreign Corporations' ratio of Claims pertaining to the foreign corporation (where there are two or more Other Foreign Corporations, the sum of the ratios calculated for each of them);

(ii) where a single foreign corporation or two or more foreign corporations intervene between the foreign corporation and any other foreign corporation (limited to any other foreign corporation the whole or a part of whose Claims vested in the shares, etc. are held by an individual or domestic corporation; hereinafter referred to as the "Other Foreign Corporation" in this paragraph) (hereinafter that intervening foreign corporation is referred to as a "capital contribution-related foreign corporation" in this paragraph) and the individual or domestic corporation, the relevant Other Foreign Corporation, capital contribution-related foreign corporation and the foreign corporation have a linkage through holding the Claims vested in the shares, etc.: The ratio obtained by multiplying the ratio of Claims of the individual or domestic corporation pertaining to the relevant Other Foreign Corporation

sequentially by the relevant Other Foreign Corporation's ratio of Claims pertaining to the capital contribution-related foreign corporations, by the capital contribution-related foreign corporation's ratio of Claims pertaining to other capital contribution-related foreign corporations, and by the capital contribution-related foreign corporation's ratio of Claims pertaining to the foreign corporation (where there are two or more linkages, the sum of the ratios calculated for each of them).

- (8) A person who has a special relationship specified by Cabinet Order with a resident or a domestic corporation prescribed in Article 40-4, paragraph (2), item (vi) of the Act is an individual or corporation listed as follows:
- (i) an individual listed as follows:
    - (a) a relative of the resident;
    - (b) a person in a relationship with the resident where a marital relationship is de facto, though a marriage has not been registered;
    - (c) an employee of the resident;
    - (d) a person other than those listed in (a) to (c) who maintains their living by receiving money or any other assets from the resident;
    - (e) a relative of any of the persons listed in (b) to (d) who depends on the person for their livelihood;
    - (f) an officer of the domestic corporation and a person listed in the items of Article 72-3 of the Order for Enforcement of the Corporation Tax Act who is related to the officer;
  - (ii) a corporation listed as follows:
    - (a) where a resident or a domestic corporation (including an individual who has a special relationship prescribed in the preceding item with the resident or domestic corporation; hereinafter referred to as a "Resident, etc." in this paragraph) controls any other corporation, the relevant other corporation;
    - (b) where a Resident, etc. or a corporation which has a special relationship prescribed in (a) with the Resident, etc. controls any other corporation, the relevant other corporation;
    - (c) where a Resident, etc. or a corporation which has a special relationship prescribed in (a) and (b) with the Resident, etc. controls any other corporation, the relevant other corporation;
    - (d) where any of the two or more corporations which have a special relationship prescribed in (a) to (c) with the same person is a Resident, etc., a corporation other than the one falling under the Resident, etc. out of those which have the special relationship with the same person.
- (9) The provisions of Article 4, paragraph (3) of the Order for Enforcement of the Corporation Tax Act apply mutatis mutandis where controlling any other corporation listed in (a) to (c) of item (ii) of the preceding paragraph.

(10) The amount of expenses specified by Cabinet Order prescribed in Article 40-4, paragraph (2), item (ii) of the Act in which the terms and phrases are replaced pursuant to the provisions of paragraph (3) of the same Article is the sum of personnel expenses for officers and employees of a specified foreign subsidiary company, etc. engaged in the business of the specified foreign subsidiary company, etc. prescribed in paragraph (3) of the same Article (limited to the amount to be included in deductible expenses for calculating the amount of income or loss pursuant to the provisions of paragraph (1) or paragraph (2) of the preceding Article for the relevant business year of the specified foreign subsidiary company, etc.).

(Determination of Business of Specified Foreign Subsidiary Companies)

Article 25-22 (1) The person specified by Cabinet Order prescribed in Article 40-4, paragraph (4), item (i) of the Act is any of the following:

- (i) other consolidated corporations (meaning consolidated corporations prescribed in Article 2, item (xii)-7-4 of the Corporation Tax Act) which have the consolidated full controlling interest prescribed in item (xii)-7-5 of the same Article with a consolidated corporation listed in the items of Article 68-90, paragraph (1) of the Act which pertains to a specified foreign subsidiary company, etc. prescribed in Article 40-4, paragraph (4) of the Act (hereinafter referred to as a "Specified Foreign Subsidiary Company, etc." in this paragraph) mainly engaged in the business listed in item (i) of the same paragraph;
- (ii) a person who holds over 50 percent of the total number or total amount of the Issued Shares, etc. of a domestic corporation listed in the items of Article 66-6, paragraph (1) of the Act which pertains to a Specified Foreign Subsidiary Company, etc. mainly engaged in the business listed in Article 40-4, paragraph (4), item (i) of the Act (excluding a person falling under any of those listed in the items of Article 40-4, paragraph (1), items of Article 66-6, paragraph (1), items of Article 68-90, paragraph (1) of the Act and the preceding item who is related to the Specified Foreign Subsidiary Company, etc.);
- (iii) a person who holds over 50 percent of the total number or total amount of the Issued Shares, etc. of a consolidated corporation listed in the items of Article 68-90, paragraph (1) of the Act (where the consolidated corporation is a consolidated subsidiary corporation prescribed in Article 2, item (xii)-7-3 of the Corporation Tax Act, a consolidated parent corporation prescribed in item (xii)-7-2 of the same Article which pertains to the consolidated corporation) which pertains to a Specified Foreign Subsidiary Company, etc. mainly engaged in the business listed in Article 40-4, paragraph (4), item (i) of the Act (excluding a person falling under any of those listed in the items of



- Article 40-4, paragraph (1), items of Article 66-6, paragraph (1), items of Article 68-90, paragraph (1) of the Act and the preceding two items who is related to the Specified Foreign Subsidiary Company, etc.);
- (iv) where a person listed in the items of Article 40-4, paragraph (1), items of Article 66-6, paragraph (1) or items of Article 68-90, paragraph (1) of the Act who is related to a Specified Foreign Subsidiary Company, etc. mainly engaged in the business listed in Article 40-4, paragraph (4), item (i) of the Act holds the shares, etc. indirectly pertaining to the Specified Foreign Subsidiary Company, etc. (the shares, etc. mean the number of shares or the amount of capital contributions of a foreign corporation specified by Cabinet Order as being held through indirect ownership as prescribed in Article 40-4, paragraph (2), item (iii) of the Act), the other foreign corporation prescribed in paragraph (5), item (i) of the preceding Article or the other foreign corporation and capital contribution-related foreign corporation(s) prescribed in item (ii) of the same paragraph which pertain to the shares, etc. held indirectly;
- (v) a person who has a special relationship specified by Cabinet Order prescribed in Article 40-4, paragraph (2), item (vi) of the Act with any of the persons listed as follows (excluding a person falling under any of those listed in the items of Article 40-4, paragraph (1), items of Article 66-6, paragraph (1), items of Article 68-90, paragraph (1) of the Act and the preceding items who is related to a Specified Foreign Subsidiary Company, etc. mainly engaged in the business listed in Article 40-4, paragraph (4), item (i) of the Act):
- (a) a Specified Foreign Subsidiary Company, etc. mainly engaged in the business listed in Article 40-4, paragraph (4), item (i) of the Act;
- (b) a person listed in the items of Article 40-4, paragraph (1), items of Article 66-6, paragraph (1) or items of Article 68-90, paragraph (1) of the Act who is related to a Specified Foreign Subsidiary Company, etc. mainly engaged in the business listed in Article 40-4, paragraph (4), item (i) of the Act;
- (c) a person listed in the preceding items.
- (2) The case specified by Cabinet Order prescribed in Article 40-4, paragraph (4), item (i) of the Act is any of the cases specified respectively in the following items, in accordance with the category of the principal business to be conducted for the relevant business year of a specified foreign subsidiary company, etc. prescribed in the same paragraph:
- (i) wholesale business: where, out of the total revenue from selling inventory assets (meaning inventory assets prescribed in Article 2, item (xx) of the Corporation Tax Act; hereinafter the same applies in this item) for the relevant business year (where there are any commissions to be received for agent or intermediary services for the buying or selling inventory assets for

the relevant business year, the revenues include the amount from the transactions for which the commissions were generated; hereinafter referred to as the "Amount of Sales Transactions" in this item), the ratio of the sum of the Amount of Sales Transactions with a person other than affiliated persons (meaning those listed in the items of Article 40-4, paragraph (1), items of Article 66-6, paragraph (1), items of Article 68-90, paragraph (1) of the Act and the preceding items who are related to the specified foreign subsidiary company, etc.; hereinafter the same applies in this paragraph and the following paragraph) exceeds 50 percent, or out of the sum of the acquisition costs for acquiring inventory assets for the relevant business year (where there are any commissions to be received for agent or intermediary services for the buying or selling inventory assets for the relevant business year, the acquisition costs include the amount from the transactions for which the commissions were generated; hereinafter referred to as the "Amount of Purchase Transactions" in this item), the ratio of the sum of the Amount of Purchase Transactions with a person other than affiliated persons exceeds 50 percent;

- (ii) banking business: where, out of the sum of the total interest received for the relevant business year, the ratio of the sum of the interest to be received from a person other than affiliated persons exceeds 50 percent, or out of the sum of the total interest paid for the relevant business year, the ratio of the sum of the interest to be paid to a person other than affiliated persons exceeds 50 percent;
- (iii) trust business: where, out of the sum of the total trust charge for the relevant business year, the ratio of the sum of the trust charge to be received from a person other than affiliated persons exceeds 50 percent;
- (iv) financial instruments business: where, out of the sum of the total commissions received (including profits from the buying and selling securities) for the relevant business year, the ratio of the sum of the commissions to be received from a person other than affiliated persons exceeds 50 percent;
- (v) insurance business: where, out of the sum of the total premium income for the relevant business year, the ratio of the sum of the premium income to be received from a person other than affiliated persons (where the premium income pertains to reinsurance, limited to premium income from insurance for assets held by a person other than affiliated persons or damages incurred by a person other than affiliated persons) exceeds 50 percent;
- (vi) water transportation business or air transportation business: where, out of the total revenue from the operation or rental of vessels or operation or rental of aircraft for the relevant business year, the ratio of the sum of the revenues to be received from a person other than affiliated persons exceeds

50 percent.

- (3) Where transactions prescribed in the preceding paragraph between a specified foreign subsidiary company, etc. and an affiliated person related to the specified foreign subsidiary company, etc. are conducted indirectly via a person other than an affiliated person related to the specified foreign subsidiary company, etc. (hereinafter referred to as a "Non-Affiliated Person" in this paragraph), transactions between the specified foreign subsidiary company, etc. and the Non-Affiliated Person are deemed to have been conducted directly between the specified foreign subsidiary company, etc. and the affiliated person and the provisions of the items of the preceding paragraph are applied, except in the case where there are reasonable grounds for having the Non-Affiliated Person intervene in the transactions.
- (4) The water areas specified by Cabinet Order prescribed in Article 40-4, paragraph (4), item (ii) of the Act are inland water and territorial sea and exclusive economic zones or water areas equivalent to continental shelves related to a state or territory prescribed in the same item.
- (5) The case specified by Cabinet Order prescribed in Article 40-4, paragraph (4), item (ii) of the Act is any of the cases specified respectively in the following items, in accordance with the category of the principal business to be conducted for the relevant business year of a specified foreign subsidiary company, etc. prescribed in the same paragraph:
- (i) real estate business: where conducting a buying and selling or rental business of real estate (including acts to let others use the real estate) (real estate include the rights thereon; hereinafter the same applies in this item) mainly located in the State of the Head Office, providing agent or intermediary services for the buying and selling or rental business of the real estate, and managing the real estate;
  - (ii) rental and leasing business: where conducting a rental business for goods to be provided for use mainly in the State of the Head Office;
  - (iii) business other than those listed in paragraph (2) and the preceding two items: where conducting a business mainly in the State of the Head Office.

(Deduction of Dividend of Surplus to Be Received by Specified Foreign Subsidiary Company)

Article 25-23 (1) The amount specified by Cabinet Order prescribed in Article 40-5, paragraph (1), item (i) of the Act is the amount obtained by deducting the sum of the amounts listed in Article 25-20, paragraph (4), item (i), (d) and (e) for the business year pertaining to a specified foreign subsidiary company, etc. prescribed in Article 40-5, paragraph (1), item (i) of the Act (hereinafter referred to a "Specified Foreign Subsidiary Company, etc." in this Article and paragraph (2) of the following Article), from the amount of eligible income

(limited to that which pertains to Taxable Income to be included in the Amount of Gross Revenue in the calculation of the amount of miscellaneous income for the years, prescribed in the same item, of a resident; hereinafter the same applies in this paragraph) pertaining to the Specified Foreign Subsidiary Company, etc., and then multiplying the amount that remains after deduction by the ratio of the shares, etc. for considering the claims held directly by the resident out of the total Issued Shares, etc. of the Specified Foreign Subsidiary Company, etc. at the end of the relevant business year of the Specified Foreign Subsidiary Company, etc. (meaning the number or the amount of the shares, etc. of a foreign corporation held by a resident (where the foreign corporation has issued the shares, etc. in which different claims are vested, the number or the amount obtained by multiplying the Issued Shares, etc. of the foreign corporation by the ratio of the amount of a dividend of surplus, etc. that the resident can receive based on the claims out of the total amount); the same applies in the following paragraph)

- (2) The amount specified by Cabinet Order prescribed in Article 40-5, paragraph (1), item (ii) of the Act is the amount obtained by deducting the sum of the amounts listed in Article 25-20, paragraph (4), item (i), (d) and (e) for the relevant business year from the amount of eligible income (limited to that which pertains to Taxable Income included in the Amount of Gross Revenue in the calculation of the amount of miscellaneous income for the years in the three years preceding the previous year prescribed in Article 40-5, paragraph (1), item (ii) of the Act of a resident) for the relevant business year of a Specified Foreign Subsidiary Company, etc., and then multiplying the amount that remains after deduction by the ratio of the shares, etc. for considering the claims held directly by the resident out of the total Issued Shares, etc. of the Specified Foreign Subsidiary Company, etc. at the end of the relevant business year of the Specified Foreign Subsidiary Company, etc.

(Determination of Affiliated Foreign Companies)

- Article 25-24 (1) In the case referred to in Article 40-4, paragraph (1) of the Act, whether or not a foreign company falls under the category of an affiliated foreign company prescribed in paragraph (2), item (i) of the same Article (hereinafter referred to as an "Affiliated Foreign Company" in this paragraph) is to be determined according to its status at the end of the relevant business year of the foreign corporation and whether or not the person falls under the category of a resident listed in the items of paragraph (1) of the same Article is determined according to its status at the end of the relevant business year of an Affiliated Foreign Company related to the resident.
- (2) With respect to the application of the provisions of Article 222 of the Order for Enforcement of the Income Tax Act when calculating the maximum creditable

amount prescribed in Article 95, paragraph (1) of the Income Tax Act for a resident subject to the provisions of Article 40-4, paragraph (1) of the Act or Article 40-5, paragraph (1) or paragraph (2) of the Act, the amount of miscellaneous income pertaining to the Taxable Income to be included in the gross revenue pursuant to the provisions of Article 40-4, paragraph (1) of the Act is to be included in the domestic source income prescribed in Article 222, paragraph (3) of the same Order, and the amount of dividend income from a dividend, etc. prescribed in Article 40-5, paragraph (1) to be received from a specified foreign subsidiary company, etc. or an affiliated foreign company subject to the provisions of Article 40-5, paragraph (1) or paragraph (2) of the Act is to be the amount of the dividend income calculated without applying these provisions.

- (3) The provisions of Article 14-10, paragraphs (1) to (5) and paragraphs (7) to (11) of the Order for Enforcement of the Corporation Tax Act apply mutatis mutandis where the provisions of Article 40-4, paragraph (7) of the Act apply under the provisions of Article 40-4 (excluding paragraph (3), paragraph (4) and paragraph (6)) to Article 40-6 of the Act and Articles 25-19 to 25-21 (excluding paragraph (10)), the preceding Article and this Article.
- (4) With regard to a trust corporation or a beneficiary of a trust subject to corporation taxation prescribed in Article 4-7 of the Corporation Tax Act, beyond what is specified in the preceding paragraph, necessary particulars concerning the application of the provisions of Article 40-4 (excluding paragraph (3), paragraph (4) and paragraph (6)) to Article 40-6 of the Act, or Articles 25-19 to 25-21 (excluding paragraph (10)), the preceding Article or this Article are specified by Ministry of Finance Order.

### **Section 8-5 Special Provisions for Taxation on Income of Specified Foreign Corporations Related to Residents Who Are Specially-Related Shareholders**

(Scope of Specially-Related Shareholders)

Article 25-25 (1) An individual who has a special relationship specified by Cabinet Order prescribed in Article 40-7, paragraph (1) of the Act is any of the following:

- (i) an individual who has a special relationship prescribed in Article 4, paragraph (1) of the Order for Enforcement of the Corporation Tax Act with an individual falling under the category of a specified shareholder, etc. (meaning a specified shareholder, etc. prescribed in Article 40-7, paragraph (2), item (i) of the Act; hereinafter the same applies in the following item and item (i) of the following paragraph);
- (ii) an officer (meaning an officer prescribed in Article 2, item (xv) of the

- Corporation Tax Act; hereinafter the same applies in this paragraph and Article 25-27, paragraph (4)) of a corporation falling under the category of a specified shareholder, etc. and a person listed in the items of Article 72-3 of the Order for Enforcement of the Corporation Tax Act who is related to the officer (referred to as a "specially-related person" in the following item);
- (iii) an officer of a specially-related domestic corporation (meaning a specially-related domestic corporation prescribed in Article 40-7, paragraph (2), item (ii) of the Act; hereinafter the same applies in this Section) and a specially-related person who is related to the officer.
- (2) A corporation which has a special relationship specified by Cabinet Order prescribed in Article 40-7, paragraph (1) of the Act is any of the following:
- (i) where a specified shareholder, etc. (including an individual who has a special relationship with the specified shareholder, etc. as prescribed in item (i) or item (ii) of the preceding paragraph) or an individual who has a special relationship with a specially-related domestic corporation as prescribed in item (iii) of the same paragraph (hereinafter referred to as a "Determined Shareholder, etc." in this paragraph) controls any other corporation, the relevant other corporation;
  - (ii) where a Determined Shareholder, etc. and a corporation which has a special relationship with the Determined Shareholder, etc. as prescribed in the preceding item control any other corporation, the relevant other corporation;
  - (iii) where a Determined Shareholder, etc. and a corporation which has a special relationship with the Determined Shareholder, etc. as prescribed in the preceding two items control any other corporation, the relevant other corporation.
- (3) The provisions of Article 4, paragraph (3) and paragraph (4) of the Order for Enforcement of the Corporation Tax Act apply mutatis mutandis where the provisions of the preceding paragraph apply.
- (4) A relationship specified by Cabinet Order prescribed in Article 40-7, paragraph (1) of the Act is the relevant relationship in the case where a specially-related shareholder, etc. prescribed in the same paragraph (hereinafter referred to as a "Specially-Related Shareholder, etc." in this Section) and a specially-related domestic corporation have a relationship where the ratio of the shares, etc. indirectly held by the Specially-Related Shareholder, etc. pertaining to the specially-related domestic corporation (meaning the ratio specified respectively in the following items for the category of cases listed in the relevant items (where falling under both of the following cases, the sum of the ratios specified respectively as follows)) is 80 percent or more:
- (i) where out of the total number or total amount of shares or capital

contributions issued by a foreign corporation (excluding that falling under the category of a Specially-Related Shareholder, etc.; hereinafter the same applies in this item) which is a shareholder, etc. (meaning a shareholder, etc. prescribed in Article 2, paragraph (1), item (viii)-2 of the Income Tax Act; hereinafter the same applies in this Article) of a specially-related domestic corporation (the issued shares or capital contributions exclude those held on their own by the foreign corporation; and the total number or total amount of the issued shares or capital contributions is referred to as the "Issued Shares, etc." in this Section), a Specially-Related Shareholder, etc. holds 80 percent or more of the number or the amount of the shares, etc. (meaning shares or capital contributions; hereinafter the same applies in this Section): The ratio of the number or the amount of the shares, etc. of the specially-related domestic corporation held by the foreign corporation which is a shareholder, etc. out of the total Issued Shares, etc. of the specially-related domestic corporation (where there are two or more of those foreign corporations which are shareholders, etc., the sum of the ratios calculated for each of them);

(ii) where a single corporation or two or more corporations intervene between a corporation which is a shareholder, etc. of a specially-related domestic corporation (excluding a foreign corporation which is a shareholder, etc. set forth in the preceding item falling under the case listed in the same item and a corporation falling under the category of a Specially-Related Shareholder, etc.) and a Specially-Related Shareholder, etc., and have a linkage with them through holding the shares, etc. (where the corporation which is a shareholder, etc. is a domestic corporation and the relevant single corporation is or two or more corporations are all domestic corporations, excluding the domestic corporations and a corporation falling under the category of a Specially-Related Shareholder, etc.; hereinafter referred to as a "Capital Contribution-Related Corporation" in this item) (limited to the case where 80 percent or more of the number or the amount of the Issued Shares, etc. of each of a Capital Contribution-Related Corporation and the corporation which is a shareholder, etc. are held by a Specially-Related Shareholder, etc. or a Capital Contribution-Related Corporation (the Specially-Related Shareholder, etc. or capital contribution-related foreign corporation is limited to those 80 percent or more of the number or the amount of whose Issued Shares, etc. are held by a Specially-Related Shareholder, etc. or other Capital Contribution-Related Corporations)): The ratio of the number or the amount of the shares, etc. of the specially-related domestic corporation held by the corporation which is a shareholder, etc. out of the total Issued Shares, etc. of the specially-related domestic corporation (where there are two or more of those corporations which are shareholders, etc., the sum of the ratios calculated for each of them).

- (5) A foreign corporation specified by Cabinet Order prescribed in Article 40-7, paragraph (1) of the Act is any of the following:
- (i) a foreign corporation falling under the category of a foreign corporation which is a shareholder, etc. prescribed in item (i) of the preceding paragraph, where the ratio of the shares, etc. held indirectly as prescribed in the same paragraph is 80 percent or more;
  - (ii) a foreign corporation falling under the category of a foreign corporation which is a shareholder, etc. prescribed in item (ii) of the preceding paragraph where the ratio of the shares, etc. held indirectly as prescribed in the preceding paragraph is 80 percent or more and a foreign corporation falling under the category of a capital contribution-related corporation prescribed in the same item;
  - (iii) a foreign corporation, over 50 percent of the number or the amount of whose Issued Shares, etc. are held directly or indirectly by a foreign corporation listed in the preceding two items (excluding a foreign corporation falling under the category of a foreign corporation listed in the preceding two items and a foreign corporation falling under the category of a Specially-Related Shareholder, etc.).
- (6) In item (iii) of the preceding paragraph, whether or not a foreign corporation directly or indirectly holds over 50 percent of the Issued Shares, etc. is to be determined based on the sum of the ratio of the shares, etc. held directly by a foreign corporation listed in item (i) and item (ii) of the same paragraph pertaining to any other foreign corporation (excluding a foreign corporation falling under the category of a foreign corporation listed in item (i) or item (ii) of the same paragraph and a foreign corporation falling under the category of a Specially-Related Shareholder, etc.; hereinafter the same applies in this paragraph) (the ratio of the shares, etc. held directly means the ratio of the number or the amount of the shares, etc. of any other foreign corporation held by a foreign corporation listed in item (i) and item (ii) of the preceding paragraph out of the total Issued Shares, etc. of the relevant other foreign corporation) and the ratio of the shares, etc. held indirectly by a foreign corporation listed in item (i) and item (ii) of the same paragraph pertaining to the relevant other foreign corporation (the ratio of the shares, etc. held indirectly means the ratio specified respectively in the following items for the category of cases listed in the relevant items (where falling under both of the following cases, the sum of the ratios specified respectively as follows):
- (i) where a foreign corporation listed in item (i) and item (ii) of the preceding paragraph holds over 50 percent of the number or the amount of the Issued Shares, etc. of a foreign corporation which is a shareholder, etc. of the relevant other foreign corporation: The ratio of the number or the amount of the shares, etc. of the relevant other foreign corporation held by the foreign



- corporation which is a shareholder, etc. out of the total Issued Shares, etc. of the relevant other foreign corporation (where there are two or more of those foreign corporations which are shareholders, etc., the sum of the ratios calculated for each of them);
- (ii) where a single foreign corporation or two or more foreign corporations intervene between a foreign corporation which is a shareholder, etc. of the relevant other foreign corporation (excluding a foreign corporation which is a shareholder, etc. set forth in the preceding item falling under the case listed in the same item) and a foreign corporation listed in item (i) and item (ii) of the preceding paragraph, and have a linkage with them through holding the shares, etc. (hereinafter referred to as a "Capital Contribution-Related Foreign Corporation" in this item) (limited to the case where over 50 percent of the number or the amount of the Issued Shares, etc. of each of a Capital Contribution-Related Foreign Corporation and the foreign corporation which is a shareholder, etc. are held by a foreign corporation listed in item (i) and item (ii) of the same paragraph or a Capital Contribution-Related Foreign Corporation (the foreign corporation or Capital Contribution-Related Foreign Corporation is limited to those over 50 percent of the number or the amount of whose Issued Shares, etc. are held by a foreign corporation listed in item (i) and item (ii) of the same paragraph or other capital contribution-related corporations)): The ratio of the number or the amount of the shares, etc. of the relevant other foreign corporation held by the foreign corporation which is a shareholder, etc. out of the total Issued Shares, etc. of the relevant other foreign corporation (where there are two or more of those foreign corporations which are shareholders, etc., the sum of the ratios calculated for each of them).
- (7) An affiliated foreign corporation specified by Cabinet Order prescribed in Article 40-7, paragraph (1) of the Act is any of the following:
- (i) an affiliated foreign corporation (meaning an affiliated foreign corporation prescribed in Article 40-7, paragraph (1) of the Act; hereinafter the same applies in this Section) which has its head office or principal office in a state or territory where there are no taxes imposed on corporate income;
- (ii) an affiliated foreign corporation where the tax imposed on its income for the relevant business year (meaning a business year prescribed in Article 2, paragraph (2), item (xix) of the Act; hereinafter the same applies in this Section) is 25 percent or less of the income.
- (8) The provisions of Article 25-19, paragraph (2) apply mutatis mutandis to the determination as to whether or not an affiliated foreign corporation falls under the category of an affiliated foreign corporation set forth in item (ii) of the preceding paragraph.
- (9) An individual who has the special relationship specified by Cabinet Order

prescribed in Article 40-7, paragraph (2), item (i) of the Act is an individual who has a special relationship prescribed in Article 4, paragraph (1) of the Order for Enforcement of the Corporation Tax Act with a shareholder, etc. of a domestic corporation.

- (10) A corporation which has a special relationship specified by Cabinet Order prescribed in Article 40-7, paragraph (2), item (i) of the Act is any of the following:
- (i) where one of the shareholders, etc. of a domestic corporation (where the domestic corporation holds its own shares, etc., excluding the domestic corporation; hereinafter referred to as a "Determined Shareholder, etc." in this paragraph) (regarding a Determined Shareholder, etc. who is an individual, the Determined Shareholder, etc. and an individual who has a special relationship with the Determined Shareholder, etc. as prescribed in the preceding paragraph; hereinafter the same applies in this paragraph) controls any other corporation, the relevant other corporation;
  - (ii) where one of the Determined Shareholders, etc. and a corporation which has a special relationship with the Determined Shareholder, etc. as prescribed in the preceding item control any other corporation, the relevant other corporation;
  - (iii) where one of the Determined Shareholders, etc. and a corporation which has a special relationship with the Determined Shareholder, etc. as prescribed in the preceding two items control any other corporation, the relevant other corporation.
- (11) The provisions of Article 4, paragraph (3) and paragraph (4) of the Order for Enforcement of the Corporation Tax Act apply mutatis mutandis where the provisions of the preceding paragraph apply.
- (12) A domestic corporation specified by Cabinet Order prescribed in Article 40-7, paragraph (2), item (ii) of the Act is a domestic corporation which has received the transfer of almost all the assets and liabilities of a specified domestic corporation prescribed in the same item immediately prior to a merger, split, transfer of business or for other reasons (hereinafter referred to as "Specified Reasons" in this paragraph) due to the Specified Reasons.

(Calculation of Eligible Income of Specified Foreign Corporations)

Article 25-26 (1) The amount of undistributed income calculated in accordance with the standards specified by Cabinet Order prescribed in Article 40-7, paragraph (2), item (iii) of the Act is the amount calculated, pursuant to the provisions of Article 25-20, paragraph (1) or paragraph (2), or paragraph (3) of the same Article, with regard to the income of a specified foreign corporation prescribed in Article 40-10, paragraph (1) of the Act (hereinafter referred to as a "Specified Foreign Corporation" in this Article and paragraph (1) of the

- following Article) in its settlement of accounts for the relevant business year.
- (2) The amount obtained as a result of an adjustment for the amount of loss and base income prescribed in Article 40-7, paragraph (2), item (iii) of the Act is the amount that remains after deducting, from the base income amount prescribed in the same item for the relevant business year of a Specified Foreign Corporation, the sum of the amounts listed as follows (where the provisions of paragraph (3) of the same Article are applied, the amount obtained by adding the amount that accounts for ten percent of the amount of expenses specified by Cabinet Order prescribed in Article 40-7, paragraph (2), item (iii) of the Act in which the terms and phrases are replaced pursuant to the provisions of paragraph (3) of the same Article):
- (i) the amount equivalent to the sum of the loss incurred in the business years that started within seven years prior to the first day of the relevant business year of the Specified Foreign Corporation (excluding the business years that started before October 1, 2007 and the business years during which the corporation did not fall under the category of Specified Foreign Corporations (including Specified Foreign Corporations prescribed in Article 66-9-2, paragraph (1) or Article 68-93-2, paragraph (1) of the Act)) (that loss excludes the amount deducted in the business years preceding the relevant business year pursuant to the provisions of this paragraph);
  - (ii) the amount of corporate income tax prescribed in Article 25-20, paragraph (2) (hereinafter referred to as "Corporate Income Tax" in this item) that the Specified Foreign Corporation is to pay in the relevant business year (where there is any amount of Corporate Income Tax to be refunded in the relevant business year, the amount that remains after deducting the amount of Corporate Income Tax to be refunded).
- (3) A loss prescribed in item (i) of the preceding paragraph is a loss calculated with regard to the amount of income of a Specified Foreign Corporation in its settlement of accounts for the relevant business year, where the calculation has been made pursuant to the provisions of paragraph (1).
- (4) The provisions of Article 25-20, paragraph (7) and paragraph (8) apply *mutatis mutandis* where the amount of income of a Specified Foreign Corporation in its settlement of accounts for the relevant business year is calculated pursuant to the provisions of paragraph (1) or paragraph (2) of the same Article.

(Calculation of the Amount of Taxable Income of Specified Foreign Corporations)

Article 25-27 (1) The amount calculated as specified by Cabinet Order prescribed in Article 40-7, paragraph (1) of the Act is the amount calculated with regard to the eligible income (meaning the eligible income prescribed in the same

paragraph; hereinafter the same applies in this Section) for the relevant business year of a Specified Foreign Corporation related to a resident who is a Specially-Related Shareholder, etc., pursuant to the provisions of Article 25-21, paragraph (1) and paragraph (2).

- (2) The provisions of Article 25-21, paragraph (3) and paragraph (4) apply mutatis mutandis to the case of calculating the amount to be included in the necessary expenses for calculating the amount of miscellaneous income pertaining to taxable income prescribed in Article 40-7, paragraph (1) of the Act which is to be included in the gross revenue pursuant to the provisions of the same paragraph. In this case, the term "Article 40-4, paragraph (2), item (iii)" in Article 25-21, paragraph (3), item (i) is deemed to be replaced with "Article 40-7, paragraph (2), item (i)", and the term "Article 222-2, paragraph (4), item (iii)" in item (ii) of the same paragraph is deemed to be replaced with "Article 222-2, paragraph (4), item (iv)".
- (3) The provisions of Article 25-21, paragraph (5) apply mutatis mutandis to the number of shares or the amount of capital contributions of a foreign corporation specified by Cabinet Order as being held indirectly as prescribed in Article 40-7, paragraph (2), item (iv) of the Act. In this case, the term "an individual" in Article 25-21, paragraph (5) is deemed to be replaced with "a resident".
- (4) The amount of expenses specified by Cabinet Order set forth in Article 40-7, paragraph (2), item (iii) of the Act in which the terms and phrases are replaced pursuant to the provisions of paragraph (3) of the same Article is the amount calculated with regard to the sum of personnel expenses for officers and employees of a specified foreign corporation engaged in the business of the specified foreign corporation prescribed in paragraph (3) of the same Article, pursuant to the provisions of Article 25-21, paragraph (10).

(Determination of Business of Specified Foreign Corporations)

Article 25-28 (1) The person specified by Cabinet Order prescribed in Article 40-7, paragraph (4), item (i) of the Act is any of the following:

- (i) other consolidated corporations (meaning consolidated corporations prescribed in Article 2, item (xii)-7-4 of the Corporation Tax Act; hereinafter the same applies in this item and item (iii)) which have the consolidated full controlling interest prescribed in Article 2, item (xii)-7-5 of the Corporation Tax Act with a consolidated corporation falling under the category of a Specially-Related Shareholder, etc. which pertains to a specified foreign corporation prescribed in Article 40-7, paragraph (4) of the Act (hereinafter referred to as a "Specified Foreign Corporation" in this paragraph) mainly engaged in the business listed in item (i) of the same paragraph (hereinafter the Specified Foreign Corporation is referred to as a "Specified Foreign

- Corporation" in this paragraph) (those other consolidated corporations exclude those falling under the category of Specially-Related Shareholders, etc. pertaining to the Specified Foreign Corporation);
- (ii) a person who holds over 50 percent of the number or the amount of the total Issued Shares, etc. of a corporation falling under the category of a Specially-Related Shareholder, etc. pertaining to a Specified Foreign Corporation mainly engaged in the business listed in Article 40-7, paragraph (4), item (i) of the Act (excluding a person falling under the category of a Specially-Related Shareholder, etc. pertaining to the Specified Foreign Corporation and a person falling under the category of persons listed in the preceding item);
  - (iii) a person who holds over 50 percent of the number or the amount of the total Issued Shares, etc. of a consolidated corporation falling under the category of a Specially-Related Shareholder, etc. (where the consolidated corporation is a consolidated subsidiary corporation prescribed in Article 2, item (xii)-7-3 of the Corporation Tax Act, a consolidated parent corporation prescribed in item (xii)-7-2 of the same Article related to the consolidated corporation) which pertains to a Specified Foreign Corporation mainly engaged in the business listed in Article 40-7, paragraph (4), item (i) of the Act (excluding a person falling under the category of a Specially-Related Shareholder, etc. pertaining to the Specified Foreign Corporation and a person falling under the category of persons listed in the preceding two items);
  - (iv) an affiliated foreign corporation related to a Specially-Related Shareholder, etc. pertaining to a Specified Foreign Corporation mainly engaged in the business listed in Article 40-7, paragraph (4), item (i) of the Act;
  - (v) a corporation which is a shareholder, etc. prescribed in Article 25-25, paragraph (4), item (ii) or a capital contribution-related corporation(s) which intervene(s) between a specially-related domestic corporation and a Specially-Related Shareholder, etc. pertaining to a Specified Foreign Corporation mainly engaged in the business listed in Article 40-7, paragraph (4), item (i) of the Act (excluding a person falling under the category of persons listed in item (i) or the preceding item);
  - (vi) a person who has a special relationship specified by Cabinet Order prescribed in Article 40-7, paragraph (1) of the Act with those listed as follows (excluding a person falling under the category of a specially-related domestic corporation pertaining to a Specified Foreign Corporation mainly engaged in the business listed in Article 40-10, paragraph (4), item (i) of the Act, a person falling under the category of a Specially-Related Shareholder, etc. and a person falling under the category of persons listed in the preceding items):

- (a) a Specified Foreign Corporation mainly engaged in the business listed in Article 40-7, paragraph (4), item (i) of the Act;
  - (b) a specially-related domestic corporation pertaining to a Specified Foreign Corporation mainly engaged in the business listed in Article 40-7 paragraph (4), item (i) of the Act;
  - (c) an individual or corporation falling under the category of a Specially-Related Shareholder, etc. pertaining to a Specified Foreign Corporation mainly engaged in the business listed in Article 40-7, paragraph (4), item (i) of the Act;
  - (d) those listed in the preceding items.
- (2) The provisions of Article 25-22, paragraph (2) and paragraph (3) apply mutatis mutandis to the case specified by Cabinet Order prescribed in Article 40-7, paragraph (4), item (i) of the Act. In this case, the term "those listed in the items of Article 40-4, paragraph (1), items of Article 66-6, paragraph (1), items of Article 68-90, paragraph (1) of the Act and the preceding items" in Article 25-22, paragraph (2), item (i) is deemed to be replaced with "a specially-related domestic corporation prescribed in Article 40-7, paragraph (2), item (ii) of the Act, Specially-Related Shareholder, etc. prescribed in paragraph (1) of the same Article and those listed in the items of Article 25-28, paragraph (1)".
- (3) The provisions of Article 25-22, paragraph (5) apply mutatis mutandis to the case specified by Cabinet Order prescribed in Article 40-7, paragraph (4), item (ii) of the Act.

(Deduction for the Amount of Dividends of Surplus from Specified Foreign Corporation)

- Article 25-29 (1) The amount specified by Cabinet Order as prescribed in Article 40-8, paragraph (1), item (i) of the Act is the amount calculated in accordance with the provisions of Article 25-23, paragraph (1), with regard to the amount of eligible income (limited to that which pertains to taxable income prescribed in the same item that is included in the Amount of Gross Revenue in the calculation of the amount of miscellaneous income, for the years prescribed in the same item, of a resident who is a Specially-Related Shareholder, etc.) pertaining to a specified foreign corporation prescribed in the same item (referred to as a "Specified Foreign Corporation" in the following paragraph).
- (2) The amount specified by Cabinet Order as prescribed in Article 40-8, paragraph (1), item (ii) of the Act is the amount calculated in accordance with the provisions of Article 25-23, paragraph (2), with regard to the amount of eligible income (limited to that which pertains to taxable income prescribed in the same item that is included in the Amount of Gross Revenue in the calculation of the amount of miscellaneous income for each of the three years preceding or including the previous year, prescribed in the same item, of a

resident who is a Specially-Related Shareholder, etc.) for each business year of a Specified Foreign Corporation.

(Determination of Specified Relationship)

- Article 25-30 (1) Where the provisions of Article 40-7, paragraph (1) of the Act apply, whether or not a domestic corporation falls under the category of a specified domestic corporation prescribed in Article 40-7, paragraph (2), item (i) of the Act is to be determined according to its status immediately before an event causing a specified relationship prescribed in paragraph (1) of the same Article occurred, and whether or not the specified relationship actually exists afterwards between a Specially-Related Shareholder, etc. and a specially-related domestic corporation and whether or not a foreign corporation falls under the category of an affiliated foreign corporation is determined according to its status at the end of the relevant business year of the specially-related domestic corporation.
- (2) Where a foreign corporation has been determined as falling under the category of an affiliated foreign corporation at the end of the relevant business year of a specially-related domestic corporation, pursuant to the provisions of preceding paragraph, the provisions of Article 40-7 of the Act apply to the eligible income for the relevant business year containing the day on which the affiliated foreign corporation (limited to that falling under the category of a specified foreign corporation prescribed in Article 40-7, paragraph (1) of the Act) was determined as falling under that category.
- (3) The provisions of Article 25-24, paragraph (2) apply mutatis mutandis to the application of the provisions of Article 222 of the Order for Enforcement of the Income Tax Act in the case of calculating the maximum creditable amount prescribed in Article 95, paragraph (1) of the Income Tax Act for a resident subject to the provisions of Article 40-7, paragraph (1) or Article 40-8, paragraph (1) of the Act.
- (4) The provisions of Article 14-10, paragraphs (1) to (5) and paragraphs (7) to (11) of the Order for Enforcement of the Corporation Tax Act apply mutatis mutandis where the provisions of Article 40-7, paragraph (8) of the Act apply under the provisions of Article 40-7 (excluding paragraph (3), paragraph (4) and paragraph (6)) to Article 40-9 of the Act, Articles 25-25 to 25-27 (excluding paragraph (5)), the preceding Article and this Article.
- (5) With regard to a trust corporation or the beneficiary of a trust subject to corporation taxation prescribed in Article 4-7 of the Corporation Tax Act, beyond what is specified in the preceding paragraph, other necessary particulars concerning the application of the provisions of Article 40-7 (excluding paragraph (3), paragraph (4) and paragraph (6)) to Article 40-9 of the Act, Articles 25-25 to 25-27 (excluding paragraph (5)), the preceding Article

or this Article are specified by Ministry of Finance Order.

### **Section 10 Other Special Provisions**

(Amount of Profit from Redemption)

Article 26-9-2 (1) The amount specified by Cabinet Order as prescribed in Article 41-12, paragraph (1) of the Act is the following amount:

(i) the amount calculated by multiplying the amount of profit from redemption prescribed in article 41-12, paragraph (7) of the Act (hereinafter referred to as "Profit for Redemption" in this Article through to Article 26-15-2) to be paid with respect to discount bonds prescribed in the same paragraph (hereinafter referred to as "Discount Bonds" in this Article through to Article 26-13) issued outside Japan by a foreign corporation listed in Article 141, item (i) of the Corporation Tax Act, by the ratio of the amount listed in (b) to the amount listed in (a):

(a) the amount of the shortfall of the Discount Bonds as prescribed in Article 136-2, paragraph (1) of the Order for Enforcement of the Corporation Tax Act (hereinafter referred to as "Discount on Company Bonds Premium" in this Article through to Article 26-15-3);

(b) the part of the amount listed in (a) that is attributed to a business conducted by the foreign corporation in Japan through a fixed place for conducting a business prescribed in Article 141, item (i) of the Corporation Tax Act;

(ii) the amount calculated by multiplying the amount of Profit for Redemption to be paid with respect to Discount Bonds issued outside Japan by a foreign corporation listed in Article 141, item (ii) or item (iii) of the Corporation Tax Act, by the ratio of the amount listed in (b) to the amount listed in (a):

(a) Discount on Company Bonds Premium of the Discount Bonds;

(b) the part of the amount listed in (a) that is attributed to businesses prescribed in Article 141, item (ii) or item (iii) of the Corporation Tax Act conducted by those foreign corporations.

(2) The amount specified by Cabinet Order as prescribed in Article 41-12, paragraph (3) of the Act is the following amount:

(i) the amount calculated by deducting the issue price from the face value of the Discount Bonds issued outside Japan by a foreign corporation listed in Article 141, item (i) of the Corporation Tax Act and then multiplying the amount that remains after deduction by the ratio of the amount listed in (b) to the amount listed in (a):

(a) Discount on Company Bonds Premium of the Discount Bonds;

(b) the part of the amount listed in (a) that is attributed to a business conducted by the foreign corporation in Japan through a fixed place for



conducting a business prescribed in Article 141, item (i) of the Corporation Tax Act;

(ii) the amount calculated by deducting the issue price from the face value of Discount Bonds issued outside Japan by a foreign corporation listed in Article 141, item (ii) or item (iii) of the Corporation Tax Act and then multiplying the amount that remains after deduction by the ratio of the amount listed in (b) to the amount listed in (a):

(a) Discount on Company Bonds Premium of the Discount Bonds;

(b) the part of the amount listed in (a) that is attributed to the businesses prescribed in Article 141, item (ii) or item (iii) of the Corporation Tax Act pertaining to these foreign corporations.

(Payment of Income Tax on Profit from Redemption)

Article 26-10 (1) The issuer of Discount Bonds must, when they pay income tax collected pursuant to the provisions of Article 41-12, paragraph (3) of the Act, attach a financial statement specified by Ministry of Finance Order to a payment statement prescribed in Article 34, paragraph (1) of the Act on General Rules for National Taxes at the time of the payment.

(2) The place for paying income tax to be collected and paid pursuant to the provisions of Article 41-12, paragraph (3) of the Act is at the location of the head office or principal office of an issuer of Discount Bonds (where the Discount Bonds are national government bonds (excluding those listed in Article 41-12, paragraph (7), item (i) of the Act), at the location of the head office of the Bank of Japan, and where the Discount Bonds are issued by a foreign corporation, at the location of the foreign corporation's principal office in Japan).

(3) The amount deemed to be income tax to be collected when receiving the redemption prescribed in Article 41-12, paragraph (4) of the Act pursuant to the provisions of the same paragraph is the amount of income tax that is to be collected from a person who receives the redemption, with regard to Discount Bonds that they hold at the time of the redemption, at the time of issuance of the Discount Bonds pursuant to the provisions of paragraph (3) of the same Article.

(Credit of the Amount of Income Tax on Profit from Redemption against Corporation Tax)

Article 26-11 (1) The amount of income tax to be credited against corporation tax out of the amount deemed to be income tax to be collected when receiving the redemption prescribed in Article 41-12, paragraph (4) of the Act pursuant to the provisions of the same paragraph is the amount calculated, pursuant to the provisions of Article 140-2 of the Order for Enforcement of the Corporation Tax

Act, with regard to the amount of the income tax (where the amount of the income tax is not clear, with regard to the amount obtained by deducting the issue price for the Discount Bonds (where the Discount Bonds are national government bonds listed in Article 41-12, paragraph (9), items (i) to (viii) of the Act which are those falling under the category of short-term government or company bonds prescribed in the same paragraph or other national government bonds specified by Ministry of Finance Order (hereinafter referred to as "Short-Term National Government Bonds, etc." in this paragraph) and are Discount Bonds other than those whose issue price is not clear, that issue price is the issue price on the final issue date for the Discount Bonds, and where the Discount Bonds are the Short-Term National Government Bonds, etc., that issue price is the price specified by Ministry of Finance Order as equivalent to the issue price for the Discount Bonds; that issue price is referred to as the "issue price, etc. on the final issue date" in Article 26-13, paragraph (1), item (i) and paragraph (5), item (ii) from the face value of the Discount Bonds and then multiplying the amount that remains after deduction (where the Discount Bonds are issued outside Japan by a foreign corporation, the amount specified by Cabinet Order, prescribed in Article 41-12, paragraph (3) of the Act) by the rate of income tax on profit from redemption for the Discount Bonds collected at the time of issuance pursuant to the provisions of paragraph (3) of the same Article, and where the Discount Bonds have been redeemed by bringing the redemption date forward or retired by purchase prior to the redemption date, with regard to the amount that remains after deducting the amount to be refunded that was calculated pursuant to the provisions of paragraph (1) of the following Article from the amount of the income tax). In this case, the term "interest" in Article 140-2, paragraph (1), item (i) of the Order for Enforcement of the Corporation Tax Act is deemed to be replaced with "profit from redemption (meaning profit from redemption as prescribed in Article 41-12, paragraph (7) (Separate Taxation for Profit from Redemption) of the Act on Special Measures Concerning Taxation; the same applies in the following paragraph and paragraph (3))"; the term "out of the number of months" in paragraph (2) of the same Article is deemed to be replaced with "out of the number of months (the number of days, where the dividend of interest, etc. is profit from redemption for short-term government or company bonds (meaning short-term government or company bonds prescribed in Article 41-12, paragraph (9) of the Act on Special Measures Concerning Taxation; the same applies in the following paragraph); hereinafter the same applies in this paragraph)"; and the term "the amount of income prescribed in paragraph (1), item (i)" in paragraph (3) of the same Article is deemed to be replaced with "the amount of income (excluding the amount of income tax on profit from redemption of short-term government or company bonds) prescribed in

paragraph (1), item (i)".

- (2) The amount of income tax collected pursuant to the provisions of Article 41-12, paragraph (3) of the Act, where a corporation acquired Discount Bonds at the time of issue, is to be included in the acquisition costs of the Discount Bonds; the amount deemed to be income tax to be collected when receiving the redemption pursuant to the provisions of paragraph (4) of the same Article is not to be included in deductible expenses for calculating the amount of income for a business year containing the time of receiving the redemption (where the business year is a consolidated business year prescribed in Article 15-2 of the Corporation Tax Act, for calculating the amount of consolidated income prescribed in Article 2, item (xviii)-4 of the same Act for the consolidated business year; hereinafter the same applies in this paragraph); and the amount of income tax to be credited against corporation tax pursuant to the provisions of Article 68 (including the cases where it is applied mutatis mutandis pursuant to Article 144 of the same Act) or Article 81-14 of the same Act is to be included in gross profits for calculating the amount of income that is to be credited for that business year.

(Refund of Income Tax in Cases of Advanced Redemption)

Article 26-12 (1) The amount of income tax to be refunded pursuant to the provisions of Article 41-12, paragraph (5) of the Act is the amount obtained by deducting the redemption price (where retirement by purchase is performed, the purchase price; hereinafter the same applies in this paragraph) from the face value of the Discount Bonds and then multiplying the amount that remains after deduction (where the Discount Bonds are issued outside Japan by a foreign corporation, the amount listed as follows) by the rate of income tax on profit from redemption for the Discount Bonds collected at the time of issue, pursuant to the provisions of paragraph (3) of the same Article:

(i) the amount obtained by deducting the redemption price from the face value of the Discount Bonds issued outside Japan by a foreign corporation listed in Article 141, item (i) of the Corporation Tax Act and then multiplying the amount that remains after deduction by the rate of the amount listed in (b) out of the amount listed in (a):

(a) Discount on Company Bonds Premium for the Discount Bonds;

(b) the part of the amount listed in (a) that is attributed to a business conducted by the foreign corporation in Japan through a fixed place for conducting a business as prescribed in Article 141, item (i) of the Corporation Tax Act;

(ii) the amount obtained by deducting the redemption price from the face value of the Discount Bonds issued outside Japan by a foreign corporation listed in Article 141, item (ii) or item (iii) of the Corporation Tax Act and then

multiplying the amount that remains after deduction by the rate of the amount listed in (b) out of the amount listed in (a):

(a) Discount on Company Bonds Premium for the Discount Bonds;

(b) the part of the amount listed in (a) that is attributed to businesses conducted by these foreign corporations as prescribed in Article 141, item (ii) or item (iii) of the Corporation Tax Act.

(2) A refund under the provisions of Article 41-12, paragraph (5) of the Act is made at the time of redemption prescribed in the same paragraph. In this case, the amount to be refunded is deducted from the amount payable pursuant to the provisions of paragraph (3) of the same Article or Article 181 or Article 212 of the Income Tax Act.

(Refund of Income Tax for Non-Taxable Corporations)

Article 26-13 (1) The amount of income tax to be refunded pursuant to the provisions of Article 41-12, paragraph (6) of the Act with regard to Discount Bonds set forth in the same paragraph is the amount specified respectively in the following items for the category of cases listed in the relevant items:

(i) where redemption is made after the redemption date: Out of the income tax collected on the Discount Bonds pursuant to the provisions of Article 41-12, paragraph (3) of the Act (where the amount of the income tax is not clear, the amount obtained by deducting the issue price, etc. on the final issue date for the Discount Bonds from the face value of the Discount Bonds and then multiplying the amount that remains after deduction (where the Discount Bonds are issued outside Japan by a foreign corporation, the amount listed as follows) by the rate of income tax on profit from redemption for the Discount Bonds collected at the time of issuance pursuant to the provisions of the same paragraph; hereinafter the same applies in this Article), the amount corresponding to the period during which a domestic corporation or trustee prescribed in Article 41-12, paragraph (6) of the Act (hereinafter referred to as a "Non-taxable Corporation, etc." in this Article) held the Discount Bonds;

(ii) where redemption is made by bringing the redemption date forward or retirement by purchase is performed prior to the redemption date: Out of the amount that remains after deducting the amount to be refunded pursuant to the provisions of Article 41-12, paragraph (5) of the Act from the income tax collected on the Discount Bonds pursuant to the provisions of paragraph (3) of the same Article, the amount corresponding to the period during which a Non-taxable Corporation, etc. held the Discount Bonds.

(2) The amount corresponding to the period during which a Non-taxable Corporation, etc. held the Discount Bonds as prescribed in items of the preceding paragraph is the amount obtained by multiplying the amount of

income tax or remaining amount prescribed in those items by the ratio of the number of months (where the Discount Bonds are short-term government or company bonds prescribed in Article 41-12, paragraph (9) of the Act, the number of days; hereinafter the same applies in this paragraph and paragraph (5), item (iii)) up to the redemption date during which the Non-taxable Corporation, etc. held the Discount Bonds out of the number of months from the issue date (where the date is not clear, the final issue date for the Discount Bonds) to the redemption date (including a date for retirement by purchase; hereinafter the same applies in this Article) of the Discount Bonds.

- (3) The number of months set forth in the preceding paragraph is calculated by calendar month, and when there are any fractions less than one month, those fractions are deemed to be one month for counting the period during which a Non-taxable Corporation, etc. held the Discount Bonds and are to be rounded off for calculating the period from the issue date to the redemption date of the Discount Bonds, and when the ratio set forth in the same paragraph exceeds one, the ratio is deemed to be one.
- (4) A refund pursuant to the provisions of Article 41-12, paragraph (6) is made at the time of paying the profit from redemption as prescribed in the same paragraph upon request from a Non-taxable Corporation, etc. In this case, the provisions of the second sentence of Article 26-12, paragraph (2) apply *mutatis mutandis*.
- (5) A Non-taxable Corporation, etc. intending to receive a refund pursuant to the provisions of Article 41-12, paragraph (6) of the Act must submit a written request for a refund containing the following particulars, along with a document certifying the date of acquisition of the Discount Bonds, to the issuer of the Discount Bonds by the day on which they receive the payment of the profit from redemption as prescribed in the same paragraph for the Discount Bonds set forth in the same paragraph:
  - (i) the name of the requester and the location of the requester's head office or principal office;
  - (ii) the sum of the face value and the sum of the issue price of the Discount Bonds for which the requester intends to receive redemption (where the issue price is not clear, the issue price, etc. on the final issue date for the Discount Bonds) and the amount of income tax on the Discount Bonds collected pursuant to the provisions of Article 41-12, paragraph (3) of the Act;
  - (iii) the date of acquisition of the Discount Bonds for which the requester intends to receive redemption and the number of months up to the redemption date out of the period during which the requester held the Discount Bonds;
  - (iv) the amount by which the requester intends to be refunded pursuant to the provisions of Article 41-12, paragraph (6) of the Act out of the amount of

- income tax listed in item (ii);
- (v) other particulars for reference.

(Treatment Where an Issuer of Discount Bonds Could Not Deduct the Amount to Refund from the Amount Payable)

Article 26-14 (1) Where the provisions of Article 26-12, paragraph (2) or paragraph (4) of the preceding Article apply, when there is any amount that an issuer prescribed in Article 41-12, paragraph (5) or paragraph (6) of the Act (hereinafter referred to as an "Issuer" in this Article) cannot deduct as prescribed in the second sentence of Article 26-12, paragraph (2) (including the cases where it is applied mutatis mutandis pursuant to paragraph (4) of the preceding Article) in the month following the month including the day on which they are to make a refund pursuant to the provisions of Article 41-12, paragraph (5) or paragraph (6) of the Act, the competent district director having jurisdiction over the place for tax payment prescribed in Article 26-10, paragraph (2) for income tax pertaining to the profit from redemption for discount bonds prescribed in Article 41-12, paragraph (5) or paragraph (6) of the Act refunds the amount that cannot be deducted to the Issuer.

(2) An Issuer who seeks the application of the provisions of the preceding paragraph must submit a document containing that fact to the competent district director set forth in the preceding paragraph, along with a detailed statement containing the amount that they are to refund pursuant to the provisions of Article 41-12, paragraph (5) or paragraph (6) of the Act, the amount that they cannot deduct as prescribed in the preceding paragraph out of the amount, which of the provisions of paragraph (5) or paragraph (6) of the same Article the refund is based on, and other necessary particulars.

(3) Where the interest on a refund prescribed in Article 58, paragraph (1) of the Act on General Rules for National Taxes is to be calculated with regard to a refund under the provisions of paragraph (1), the period set forth in Article 58, paragraph (1) of the same Act to be used as the basis for the calculation is the period from the day on which one month has elapsed from the next day of submitting the documents set forth in the preceding paragraph up to the day on which the payment for the refund is determined or the day on which an appropriation is made for the refund (where there has been any day suitable for an appropriation before that day, up to the day which proved to be suitable).

(Scope of Discount Bonds Pertaining to Separate Taxation on Profit from Redemption)

Article 26-15 (1) The government or company bonds specified by Cabinet Order prescribed in Article 41-12, paragraph (7) of the Act are the government or company bonds listed as follows which are issued by means of a discount:

- (i) national government bonds and local government bonds;
  - (ii) company bonds issued by a domestic corporation (including bonds issued by a domestic corporation other than a company under special acts);
  - (iii) bonds issued by a foreign corporation (for bonds issued outside Japan, limited to those listed as follows):
    - (a) where the whole or a part of Discount on Company Bonds Premium for the company bonds issued outside Japan by a foreign corporation listed in Article 141, item (i) of the Corporation Tax Act is attributed to a business conducted by the foreign corporation in Japan through a fixed place of business prescribed in the same item, the company bonds;
    - (b) where the whole or a part of Discount on Company Bonds Premium for the company bonds issued outside Japan by a foreign corporation listed in Article 141, item (ii) or item (iii) of the Corporation Tax Act is attributed to a business conducted by the foreign corporation as prescribed in these items, those company bonds.
- (2) Those specified by Cabinet Order prescribed in Article 41-12, paragraph (7), item (ii) of the Act are the bonds issued by the Japan Housing Finance Agency, the Okinawa Development Finance Corporation, or the Urban Renaissance Agency pursuant to the provisions of Article 8 of the Supplementary Provisions of the Japan Housing Finance Agency Act, Article 27, paragraph (4) of the Okinawa Development Finance Corporation Act (Act No. 31 of 1972) or Article 15, paragraph (1) of the Supplementary Provisions of the Urban Renaissance Agency Act.

(Application of the Income Tax Act to Profit from Redemption to Be Received by Nonresident)

Article 26-15-2 Profit from redemption of government or company bonds listed in paragraph (1), item (iii) of the preceding Article (excluding specified short-term government or company bonds prescribed in Article 41-12, paragraph (9) of the Act) that is to be received by a nonresident are deemed to be income arising from the utilization or holding of assets located in Japan prescribed in Article 161, item (i) of the Income Tax Act, and the provisions of the same Act and other income tax-related laws and regulations (excluding provisions concerning withholding income tax prescribed in Article 2, paragraph (1), item (xlv) of the Income Tax Act) apply.

(Income from Transfer of Discount Bonds Deemed to Be Non-Taxable)

Article 26-15-3 The provisions of Article 37-16, paragraph (1) of the Act do not apply to income arising from the transfer of the following government or company bonds, issued by means of a discount, that was carried out by a resident or a nonresident who maintains a permanent establishment in Japan:

- (i) where the whole of the Discount on Company Bonds Premium for the company bonds issued outside Japan by a foreign corporation listed in Article 141, item (i) of the Corporation Tax Act is attributed to a business that is conducted by the foreign corporation in Japan through a fixed place of business as prescribed in the same item, those company bonds;
- (ii) where the whole of the Discount on Company Bonds Premium for the company bonds issued outside Japan by a foreign corporation listed in Article 141, item (ii) or item (iii) of the Corporation Tax Act is attributed to a business that is conducted by the foreign corporation as prescribed in these items, those company bonds.

(Scope of Specified Entries or Records under the Book-Entry Transfer System)

Article 26-16 The entries or records under the book-entry system specified by Cabinet Order prescribed in Article 41-12, paragraph (9) of the Act are the entries or records under the book-entry system specified respectively in the following items for the category of short-term government or company bonds listed in the relevant items:

- (i) short-term government or company bonds (meaning short-term government or company bonds prescribed in Article 41-12, paragraph (9) of the Act; the same applies in the following item) listed in items (i) to (viii) of the same paragraph: Entries or records under the book-entry system (meaning entries or records under the book-entry system prescribed in Article 41-12, paragraph (9) of the Act; hereinafter the same applies through to Article 26-20) where entries or records under the book-entry system are not made in an account established by a foreign intermediary (meaning a foreign intermediary prescribed in Article 41-12, paragraph (12) of the Act; hereinafter the same applies through to Article 26-20) other than a Qualified Foreign Intermediary prescribed in Article 5-2, paragraph (5), item (iv) of the Act;
- (ii) short-term government or company bonds other than short-term government or company bonds listed in the preceding item: Entries or records under the book-entry system where entries or records under the book-entry system are not made in an account established by a foreign intermediary.

(Income from Transfer of Specified Short-Term Government or Company Bonds Not Excluded from Taxation)

Article 26-17 The income specified by Cabinet Order prescribed in Article 41-12, paragraph (10) of the Act is the income from a transfer of specified short-term government or company bonds prescribed in the same paragraph that was carried out by a resident or a nonresident who maintains a permanent



establishment in Japan.

(Submission of a Written Notice by a Person Who Makes Entries or Records under the Book-Entry Transfer System for Specified Book-Entry National Government Bonds)

- Article 26-18 (1) Those specified by Cabinet Order prescribed in Article 41-12, paragraph (12) of the Act are the national government or any of the following:
- (i) a corporation listed in appended table 1 of the Corporation Tax Act;
  - (ii) a corporation established under special acts (limited to a corporation whose name was determined under the special acts and where it is determined thereunder that letters used in the name may not be used for any other persons' names);
  - (iii) a specified book-entry institution, etc. prescribed in Article 41-12, paragraph (12) of the Act (hereinafter referred to as a "Specified Book-Entry Institution, etc." in this Article and Article 26-20, paragraph (2)) and a foreign intermediary;
  - (iv) a foreign government, foreign local public entity, foreign central bank, and an international organization that Japan has joined.
- (2) The documents specified by Cabinet Order prescribed in Article 41-12, paragraph (12) of the Act are the documents listed respectively in the following items for the category of persons listed in the relevant items:
- (i) an individual: A copy of the certificate of residence, certificate of items entered in the certificate of residence, health insurance card, driver's license and certificate of alien registration of the individual and other documents specified by Ministry of Finance Order;
  - (ii) a corporation (including an association or foundation without juridical personality prescribed in Article 2, item (viii) of the Corporation Tax Act; hereinafter the same applies in this item): A certificate of registered particulars concerning registration for establishment, receipt of national or local tax and certificate of tax payment of the corporation and other documents specified by Ministry of Finance Order.
- (3) The identification documents prescribed in Article 41-12, paragraph (12) of the Act (hereinafter referred to as the "Identification Documents" through to Article 26-20) must be presented pursuant to the provisions of Article 41-12, paragraph (12) of the Act when submitting a written notice set forth in the same paragraph.
- (4) When a person who had submitted a written notice set forth in Article 41-12, paragraph (12) of the Act has changed the person's name or address (or any other place specified by Ministry of Finance Order in the case where the person does not have an address in Japan; hereinafter the same applies through to Article 26-20), the person must promptly submit a document containing the

person's name and address after the change to the head of the Business Office, etc. (meaning a Business Office, etc. prescribed in Article 41-12, paragraph (12) of the Act; hereinafter the same applies in this Article) of the Specified Book-Entry Institution, etc. to which the person had submitted the written notice (where the person had submitted the written notice, pursuant to the provisions of the same paragraph, via a foreign intermediary to the head of the Business Office, etc. of the Specified Book-Entry Institution, etc. where they make entries or records under the book-entry system for the specified Book-Entry National Government Bonds, etc. (meaning specified Book-Entry National Government Bonds, etc. prescribed in the same paragraph; hereinafter the same applies through to Article 26-20), the person must promptly submit that document via the foreign intermediary to the head of the Business Office, etc. of the Specified Book-Entry Institution, etc., according to the provisions of the first sentence of Article 41-12, paragraph (12) of the Act). The same applies where the person has changed the name or address again after submitting that document.

- (5) A person who submits the document prescribed in the preceding paragraph must, when submitting that document, present the Identification Documents to the head of the Business Office, etc. of the Specified Book-Entry Institution, etc. to which they submit that document (excluding the case where they submit that document via a foreign intermediary; the same applies in the following paragraph) or to the head of the overseas Business Office, etc. (meaning the overseas Business Office, etc. prescribed in Article 41-12, paragraph (12) of the Act) of the foreign intermediary set forth in the same paragraph via which they had submitted a written notice prescribed in the preceding paragraph as prescribed in Article 41-12, paragraph (12) of the Act (referred to as the "head of the overseas Business Office, etc. of the foreign intermediary" in the following paragraph and paragraph (8)).
- (6) The head of the Business Office, etc. of the Specified Book-Entry Institution, etc. or the head of the overseas Business Office, etc. of the foreign intermediary must, when a written notice prescribed in Article 41-12, paragraph (12) of the Act or the document prescribed in paragraph (4) has been submitted, confirm whether or not the name and address entered in the written notice or the document are consistent with the name and address entered in the Identification Documents which were presented pursuant to the provisions of Article 41-12, paragraph (12) of the Act or the preceding paragraph at the time of the submission of the written notice or the document.
- (7) The foreign intermediary set forth in the preceding paragraph that has provided a confirmation pursuant to the provisions of the same paragraph must submit the documents prescribed in Article 41-12, paragraph (14) of the Act for each person who makes entries or records under the book-entry system

set forth in paragraph (12) of the same Article to the head of the Business Office, etc. of the Specified Book-Entry Institution, etc. where the foreign intermediary makes entries or records under the book-entry system for specified Book-Entry National Government Bonds, etc. pertaining to the confirmation (where the foreign intermediary is a foreign further indirect account management institution (meaning a foreign further indirect account management institution prescribed in the same paragraph), to the head of the Business Office, etc. of the Specified Book-Entry Institution, etc. where the foreign further indirect account management institution prescribed in paragraph (14) of the same Article pertaining to the specified Book-Entry National Government Bonds, etc. makes entries or records under the book-entry system for the specified Book-Entry National Government Bonds, etc. via the foreign further indirect account management institution).

- (8) The head of the Business Office, etc. of the Specified Book-Entry Institution, etc. or the head of the overseas Business Office, etc. of the foreign intermediary must, when having provided a confirmation pursuant to the provisions of paragraph (6), clearly record that they have provided the confirmation in the books concerning the confirmation (including the books or documents equivalent thereto), pursuant to the provisions of Ministry of Finance Order, and preserve those books; and the head of the Business Office, etc. of the Specified Book-Entry Institution, etc. who has received the submission of a written notice prescribed in Article 41-12, paragraph (12) of the Act, the document prescribed in paragraph (4) or the documents prescribed in the preceding paragraph must preserve the written notice and documents, pursuant to the provisions of Ministry of Finance Order.
- (9) Where a nonresident or foreign corporation (excluding those listed in paragraph (1), item (i), item (iii), or item (iv); hereinafter the same applies in this paragraph) makes entries or records under the book-entry system for Short-Term National Government Bonds, etc. (meaning national government bonds listed in Article 41-12, paragraph (9), items (i) to (viii) of the Act which fall under the category of specified short-term government or company bonds and principal-only Book-Entry National Government Bonds and coupon-only Book-Entry National Government Bonds prescribed in paragraph (12) of the same Article) for the first time on or after April 1, 1999 in the account pertaining to entries or records under the book-entry system that has gone through the confirmation pursuant to the provisions of Article 5-2, paragraph (9) of the Act (including the cases where it is applied *mutatis mutandis* pursuant to paragraph (12) of the same Article; hereinafter the same applies in this paragraph) (hereinafter that confirmation is referred to as a "confirmation pertaining to Book-Entry National Government Bonds, etc." in this paragraph), with regard to the entries or records under the book-entry system, it is deemed

that the submission of a written notice set forth in Article 41-12, paragraph (12) of the Act under the provisions of the same paragraph (including the submission of the document set forth in paragraph (4) under the provisions of the same paragraph) has been made by the submission of a Written Application for Tax Exemption of Book-Entry National Government Bonds set forth in Article 5-2, paragraph (1), item (i), (a) of the Act under the provisions of (a) of the same item (including the submission of a written application set forth in paragraph (10) of the same Article under the provisions of the same paragraph) or the submission of a Written Application for Tax Exemption of Book-Entry Local Government Bonds set forth in Article 5, paragraph (1), item (ii), (a) of the Act under the provisions of (a) of the same item (including the submission of a written application set forth in paragraph (11) of the same Article under the provisions of the same paragraph) for the confirmation pertaining to Book-Entry National Government Bonds, etc., that the presentation of the Identification Documents under the provisions of Article 41-12, paragraph (12) of the Act (including the provisions of paragraph (5)) has been made by the presentation of the documents specified by Cabinet Order set forth in Article 5-2, paragraph (9) of the Act under the provisions of the same paragraph for the confirmation pertaining to Book-Entry National Government Bonds, etc., and that the confirmation under the provisions of paragraph (6) (including the submission of the documents set forth in paragraph (7) under the provisions of the same paragraph) has been provided by the confirmation pertaining to Book-Entry National Government Bonds, etc.; provided, however, that this does not apply when the name and address to be entered in a written notice set forth in Article 41-12, paragraph (12) of the Act or the document set forth in paragraph (4) are inconsistent with the name and address of the nonresident or foreign corporation for which the confirmation pertaining to Book-Entry National Government Bonds, etc. has been provided.

(10) The form of a written notice set forth in Article 41-12, paragraph (12) of the Act is specified by Ministry of Finance Order.

(11) The documents specified by Cabinet Order prescribed in Article 41-12, paragraph (14) of the Act are a document certifying that the confirmation prescribed in the same paragraph has been provided, the Identification Documents and a copy of the Identification Documents.

(Entries or Records in the Books by a Foreign Intermediary)

Article 26-18-2 (1) When persons intending to make entries or records under the book-entry system prescribed in Article 41-12, paragraph (15) of the Act (hereinafter referred to as "Customers" in this Article) have made entries or records under the book-entry system for specified Book-Entry National Government Bonds, etc. via a foreign intermediary, the foreign intermediary

must enter or record the particulars prescribed in the same paragraph in the books prescribed in the same paragraph, for each of the Customers each time, and preserve those books pursuant to the provisions of Ministry of Finance Order.

- (2) When Customers have made entries or records under the book-entry system for specified Book-Entry National Government Bonds, etc. via a foreign intermediary, the foreign intermediary must provide information about the particulars prescribed in Article 41-12, paragraph (16) of the Act for each of the Customers to the Specified Book-Entry Institution, etc. prescribed in the same paragraph of the foreign intermediary pertaining to the specified Book-Entry National Government Bonds, etc. by way of a document or any other means prescribed in the following paragraph.
- (3) The means specified by Cabinet Order prescribed in Article 41-12, paragraph (16) of the Act is a means of using an electronic data processing system or another means of using information and communications technology that is specified by Ministry of Finance Order.
- (4) The Specified Book-Entry Institution, etc. prescribed in paragraph (2) must, when having received a notification set forth in the same paragraph, enter or record the particulars notified, for each of the Customers each time, in the books prescribed in Article 41-12, paragraph (16) of the Act and preserve those books pursuant to the provisions of Ministry of Finance Order.

(Notification of a Recipient of a Consideration for the Transfer of Specified Book-Entry National Government Bonds)

- Article 26-19 (1) Those specified by Cabinet Order prescribed in Article 41-12, paragraph (17) of the Act are the national government and those listed in Article 26-18, paragraph (1), item (i), item (ii) and item (iv) (referred to as "public corporations, etc." in paragraph (1) of the following Article).
- (2) A notification under the provisions of Article 41-12, paragraph (17) of the Act must be made each time, on receipt of the payment of a consideration for the transfer of specified Book-Entry National Government Bonds, etc. prescribed in the same paragraph.
  - (3) The Identification Documents must be presented pursuant to the provisions of Article 41-12, paragraph (17) of the Act when making a notification set forth in the same paragraph.
  - (4) Necessary particulars concerning the scope of the Identification Documents that a person intending to make a notification under the provisions of Article 41-12, paragraph (17) of the Act must present pursuant to the provisions of the same paragraph are specified by Ministry of Finance Order.
  - (5) A defrayer prescribed in Article 41-12, paragraph (17) of the Act (referred to as a "Defrayer" in the following paragraph) must, when having received a

notification under the provisions of paragraph (17) of the same Article, confirm whether or not the name and address notified are consistent with the name and address entered in the Identification Documents that were presented to the Defrayer at the time of the notification pursuant to the provisions of the same paragraph.

- (6) A Defrayer must, when having provided a confirmation under the provisions of the preceding paragraph, clearly record that they have provided the confirmation in the books concerning the confirmation (including the books or documents equivalent thereto), pursuant to the provisions of Ministry of Finance Order, and preserve those books.

(Submission of a Written Notice by a Recipient of Redemption Money of Specified Book-Entry National Government Bonds)

Article 26-20 (1) Those specified by Cabinet Order prescribed in Article 41-12, paragraph (18) of the Act are public corporations, etc.

- (2) Where a specified book-entry institution, etc. and a foreign intermediary receive redemption money (meaning redemption money prescribed in Article 41-12, paragraph (18) of the Act; hereinafter the same applies in this Article) or payment of interest (meaning interest prescribed in Article 41-12, paragraph (18) of the Act; hereinafter the same applies in this Article) pertaining to specified Book-Entry National Government Bonds, etc., due to the redemption (meaning the redemption prescribed in Article 41-12, paragraph (18) of the Act; the same applies in paragraph (7)) or payment of interest, a written notice set forth in Article 41-12, paragraph (18) of the Act under the provisions of the same paragraph is not required to be submitted for the receipt of the redemption or payment of interest.

- (3) The identification documents must be presented pursuant to the provisions of Article 41-12, paragraph (18) of the Act when submitting a written notice set forth in the same paragraph.

- (4) Necessary particulars concerning the scope of the identification documents that a person intending to submit a written notice under the provisions of Article 41-12, paragraph (18) of the Act must present pursuant to the provisions of the same paragraph are specified by Ministry of Finance Order.

- (5) A person in charge of handling payment of redemption money or interest pertaining to specified Book-Entry National Government Bonds, etc. must, when a written notice prescribed in Article 41-12, paragraph (18) of the Act has been submitted, confirm whether or not the name and address entered in the written notice are consistent with the name and address entered in the identification documents that were presented to the person at the time of the submission of the written notice pursuant to the provisions of the same paragraph.

- (6) A person in charge of handling payment of redemption money or interest pertaining to specified Book-Entry National Government Bonds, etc. must, when having provided a confirmation under the provisions of the preceding paragraph, clearly record that they have provided the confirmation in the books concerning the confirmation (including the books or documents equivalent thereto), pursuant to the provisions of Ministry of Finance Order, and preserve those books and the written notice prescribed in Article 41-12, paragraph (18) of the Act.
- (7) Where a person who receives a payment prescribed in Article 41-12, paragraph (18) of the Act receives redemption money or payment of interest pertaining to specified Book-Entry National Government Bonds, etc., due to the redemption or payment of interest, pertaining to a confirmation provided pursuant to the provisions of Article 26-18, paragraph (6) (hereinafter referred to as a "Confirmation Pertaining to Entries or Records Under the Book-Entry System" in this paragraph), with regard to the receipt of the redemption money or payment of interest, it is deemed that the submission of a written notice set forth in Article 41-12, paragraph (18) of the Act under the provisions of the same paragraph has been made by the submission of a written notice set forth in Article 41-12, paragraph (12) of the Act under the provisions of the same paragraph (including the submission of the document set forth in Article 26-18, paragraph (4) under the provisions of the same paragraph) for the Confirmation Pertaining to Entries or Records Under the Book-Entry System, that the presentation of the identification documents under the provisions of Article 41-12, paragraph (18) of the Act has been made by the presentation of the identification documents under the provisions of Article 41-12, paragraph (12) of the Act (including the provisions of Article 26-18, paragraph (5)) for the Confirmation Pertaining to Entries or Records Under the Book-Entry System, and that the confirmation under the provisions of Article 41-12, paragraph (18) of the Act (including the submission of the documents set forth in paragraph (14) of the same Article under the provisions of the same paragraph which is applied mutatis mutandis pursuant to paragraph (19) of the same Article) has been provided by the Confirmation Pertaining to Entries or Records Under the Book-Entry System; provided, however, that this does not apply when the name and address to be entered in a written notice set forth in Article 41-12, paragraph (18) of the Act are inconsistent with the name and address of the person for which the Confirmation Pertaining to Entries or Records Under the Book-Entry System has been provided.
- (8) The form of a written notice set forth in Article 41-12, paragraph (18) of the Act is specified by Ministry of Finance Order.

(Submission of Report of Payment of a Consideration for the Transfer or

- Redemption Money of Specified Book-Entry National Government Bonds)
- Article 26-21 (1) Those specified by Cabinet Order prescribed in Article 41-12, paragraph (21) of the Act are the national government and those listed in the items of Article 26-18, paragraph (1).
- (2) A defrayer prescribed in Article 41-12, paragraph (21) of the Act who intends to obtain the approval set forth in the same paragraph must submit a written application containing their name and location, intention to obtain the approval, and any other particulars specified by Ministry of Finance Order to the competent district director prescribed in the same paragraph.
- (3) Where a written application set forth in the preceding paragraph has been submitted, when the competent district director set forth in the same paragraph has granted approval or has decided not to grant approval, the director is to notify to that effect to the applicant in writing.
- (4) A person in charge of handling payment of redemption money or interest pertaining to specified Book-Entry National Government Bonds, etc. prescribed in Article 41-12, paragraph (22) of the Act who intends to obtain the approval set forth in the same paragraph must submit a written application containing their name and location, intention to obtain the approval, and any other particulars specified by Ministry of Finance Order to the competent district director prescribed in the same paragraph.
- (5) Where a written application set forth in the preceding paragraph has been submitted, when the competent district director set forth in the same paragraph has granted approval or has decided not to grant approval, the director is to notify to that effect to the applicant in writing.
- (6) A person who pays a consideration for the transfer of specified Book-Entry National Government Bonds, etc. or who is in charge of handling payment of redemption money or interest pertaining to specified Book-Entry National Government Bonds, etc. prescribed in Article 41-12, paragraph (23) of the Act, who intends to obtain the approval set forth in the same paragraph, must submit a written application containing their name and location, the type of optical disk prescribed in the same paragraph which they intend to submit, and any other particulars specified by Ministry of Finance Order to the competent district director having jurisdiction over the location.
- (7) Where a written application set forth in the preceding paragraph has been submitted, when the competent district director set forth in the same paragraph has granted approval or has decided not to grant approval, the director is to notify to that effect to the applicant in writing.
- (8) The form of a report of payment of a consideration for the transfer of specified Book-Entry National Government Bonds, etc. prescribed in Article 41-12, paragraph (21) of the Act or a report of payment of redemption money, etc. of specified Book-Entry National Government Bonds, etc. prescribed in paragraph



(22) of the same Article is specified by Ministry of Finance Order.

(Discount on Bonds Regarding Foreign-Issued Company Bonds to Which Special Provisions for Tax Exemption Are Not Applied)

Article 26-22 The discount on bonds specified by Cabinet Order prescribed in Article 41-13 of the Act is the discount on bonds listed as follows:

- (i) the discount on bonds to be received by a nonresident listed in Article 164, paragraph (1), item (i) of the Income Tax Act which is attributed to a business conducted by the nonresident in Japan at any fixed place prescribed in the same item;
- (ii) the discount on bonds to be received by a nonresident listed in Article 164, paragraph (1), item (ii) or item (iii) of the Income Tax Act which is attributed to a business conducted by the nonresident prescribed in these items.

(Special Provisions for Taxation on Foreign Partners)

Article 26-30 (1) The act specified by Cabinet Order as the execution of operations, as prescribed in Article 41-21, paragraph (1), item (ii) of the Act, is the following acts:

- (i) execution of operations pertaining to the business conducted under an investment partnership contract (meaning an investment partnership contract prescribed in Article 41-21, paragraph (2), item (i) of the Act; hereinafter the same applies in this Article and the following Article) (that business is hereinafter referred to as an "investment partnership business" in this paragraph and the following paragraph; that execution is hereinafter referred to as the "execution of operations" in this paragraph);
  - (ii) determination of the execution of operations pertaining to the investment partnership business;
  - (iii) giving approval or consent for the execution of operations pertaining to the investment partnership business or on the determination thereof, or any other acts similar thereto.
- (2) In the case of applying the provisions of Article 41-21, paragraph (1), item (ii) of the Act, when a person who has an equity interest in the partnership property (referred to as "Investment Partnership Property" in paragraph (4) and paragraph (5)) pertaining to an investment partnership contract subject to special provisions (meaning an investment partnership contract subject to the provisions of Article 41-21, paragraph (1), item (ii) of the Act, which is concluded by a nonresident or foreign corporation who is subject to the provisions of the same paragraph; hereinafter the same applies in this Article and the following Article), as partnership property pertaining to any of the partnership contracts listed in the following items (excluding the investment partnership contract subject to special provisions; hereinafter the same applies

- in this paragraph), which is concluded by one of the partners who has concluded the investment partnership contract subject to special provisions (the relevant person means a person other than the partner), performs the acts listed in the items of the preceding paragraph pertaining to the investment partnership business under the investment partnership contract subject to special provisions as the execution of operations of the business conducted based on the partnership contract listed in those items, it is deemed that the partner performs the acts pertaining to the investment partnership business:
- (i) a partnership contract that the partner has concluded directly;
  - (ii) a partnership contract that a partnership established under the partnership contract listed in the preceding item (including partnerships similar thereto; hereinafter the same applies in this paragraph) has concluded directly;
  - (iii) a partnership contract that a partnership established under the partnership contract listed in the preceding item or the following item has concluded directly;
  - (iv) a partnership contract that a partnership established under the partnership contract listed in the preceding item has concluded directly.
- (3) The partnership contract prescribed in the preceding paragraph means a contract listed in the following items, and the partnership property prescribed in the same paragraph means property specified in those items for the category of contracts listed in those items:
- (i) partnership contract prescribed in Article 667, paragraph (1) of the Civil Code (Act No. 89 of 1896): partnership property prescribed in Article 668 of the same Code;
  - (ii) investment limited partnership contract prescribed in Article 3, paragraph (1) of the Limited Partnership Act for Investment (Act No. 90 of 1998): partnership property prescribed in Article 668 of the Civil Code as applied *mutatis mutandis* pursuant to Article 16 of the same Act;
  - (iii) limited liability business partnership contract prescribed in Article 3, paragraph (1) of the Limited Liability Partnership Act: partnership property prescribed in Article 668 of the Civil Code as applied *mutatis mutandis* pursuant to Article 56 of the same Act;
  - (iv) a contract in a foreign state similar to the contracts listed in the preceding three items (hereinafter referred to as a "Foreign Partnership Contract" in this item): property similar to partnership property prescribed in the preceding three items pertaining to the Foreign Partnership Contract.
- (4) The ratio calculated pursuant to the provisions of Cabinet Order as the ratio of equity interest as prescribed in Article 41-21, paragraph (1), item (iii) of the Act is either of the following ratios, which is higher:
- (i) the total of the ratios of equity interest of each specially-related partner

pertaining to the nonresident or foreign corporation set forth in Article 41-21, paragraph (1) of the Act in the Investment Partnership Property (in the case where the specially-related partner is a person listed in item (iii) of the following paragraph, limited to the ratio pertaining to the partnership property prescribed in the same item);

(ii) the total of the profit and loss distribution ratios of each specially-related partner set forth in the preceding item pertaining to an investment partnership contract subject to special provisions (the term "profit and loss distribution ratio" means the ratio of the distribution of profits and losses under the provisions of Article 674 of the Civil Code as applied mutatis mutandis pursuant to Article 16 of the Limited Partnership Act for Investment or the ratio similar thereto under a Foreign Partnership Contract prescribed in Article 41-21, paragraph (2), item (vi) of the Act; in the case where the specially-related partner is a person listed in item (iii) of the following paragraph, limited to the ratio pertaining to the partnership contract prescribed in the same item).

(5) The specially-related partner prescribed in the preceding paragraph is one of the following persons:

(i) a nonresident or foreign corporation who is a partner who has concluded an investment partnership contract subject to special provisions;

(ii) a person who has a special relationship with the nonresident or foreign corporation;

(iii) a person (excluding the persons listed in the preceding two items) who has equity interest in the Investment Partnership Property as partnership property prescribed in paragraph (2) pertaining to the partnership contract (excluding an investment partnership contract subject to special provisions) listed in the items of the same paragraph that the single nonresident or foreign corporation has concluded.

(6) The person who has a special relationship with a nonresident or foreign corporation as prescribed in item (ii) of the preceding paragraph is one of the following persons:

(i) one of the following individuals:

(a) a relative of the nonresident;

(b) a person in a relationship with the nonresident where a marital relationship is de facto, though a marriage has not been registered;

(c) an employee of the nonresident;

(d) a person other than one of those listed in (a) through (c), who maintains their living by receiving money or other assets received from the nonresident;

(e) a relative of any of the persons listed in (b) through (d) who depends on the person for their livelihood;

- (f) an officer of the foreign corporation (meaning an officer prescribed in Article 2, item (xv) of the Corporation Tax Act; hereinafter the same applies in this item) and a person listed in the items of Article 72-3 of the Order for Enforcement of the Corporation Tax Act pertaining to the officer;
  - (ii) in the case where there is a relationship between the relevant one nonresident or foreign corporation (referred to as a "nonresident, etc." in the following item) and another person whereby either one of them (if the relevant other person is an individual, including an individual who has a special relationship prescribed in Article 4, paragraph (1) of the Order for Enforcement of the Corporation Tax Act with the relevant other person) controls the other (limited to a corporation): the relevant other person directly or indirectly;
  - (iii) in the case where there is a relationship between the nonresident, etc. and another person (limited to a corporation) whereby the same person (if the relevant other person is an individual, including an individual who has a special relationship as prescribed in Article 4, paragraph (1) of the Order for Enforcement of the Corporation Tax Act with the relevant other person) controls the relevant one nonresident, etc. directly or indirectly and the relevant other person: the relevant other person.
- (7) The relationship of direct or indirect control prescribed in item (ii) or item (iii) of the preceding paragraph means any relationships between one person and another person whereby the relevant other person falls under the category of corporation listed in the following:
- (i) in the case where the person controls a corporation: the corporation;
  - (ii) in the case where the corporation or the person listed in the preceding item or the following item and the corporation listed in the preceding item or the following item control another corporation: the relevant other corporation;
  - (iii) in the case where the corporation or the person listed in the preceding item and the corporation listed in the corporation control another corporation: the relevant other corporation.
- (8) The provisions of Article 4, paragraph (3) and paragraph (6) of the Order for Enforcement of the Corporation Tax Act apply mutatis mutandis pursuant to the case of controlling the corporation prescribed in item (i) of the preceding paragraph and the case of controlling another corporation prescribed in item (ii) or item (iii) of the same paragraph.
- (9) The person who has a special relationship specified by Cabinet Order with an unlimited liability partner as prescribed in Article 41-21, paragraph (1), item (iv) of the Act is a nonresident or foreign corporation in the relationship whereby the unlimited liability partner falls under any of the categories of persons listed in the items of paragraph (6).
- (10) The grounds specified by Cabinet Order as prescribed in Article 41-21,

paragraph (4) of the Act are the following grounds:

- (i) dissolution of the investment partnership prescribed in Article 41-21, paragraph (2), item (ii) of the Act (referred to as an "investment partnership" in the following item and the following Article) pertaining to the written application for special provisions set forth in paragraph (4) of the same Article;
  - (ii) the fact that the person who has submitted the written application for special provisions set forth in the preceding item is no longer a partner of an investment partnership pertaining to the written application for special provisions due to a withdrawal from the investment partnership or on other grounds.
- (11) Where the person in charge of handling distribution prescribed in Article 41-21, paragraph (3) of the Act (referred to as a "person in charge of handling distribution" in the following paragraph) has received a written application for special provisions prescribed in paragraph (3) of the same Article or a written statement of change prescribed in paragraph (7) of the same Article (hereinafter referred to as a "Written Application for Special Provisions, etc." in this paragraph and the following paragraph), they must submit the Written Application for Special Provisions, etc. to the district director of the tax office prescribed in paragraph (3) of the same Article no later than the tenth of the month following the month including the day of the receipt, and prepare and preserve a copy of the Written Application for Special Provisions, etc. (including those equivalent thereto) pursuant to the provisions of Ministry of Finance Order.
- (12) The person in charge of handling distribution who has received a Written Application for Special Provisions, etc. must, for each person who has submitted the Written Application for Special Provisions, etc., enter or record in their book the day on which the person who has submitted the Written Application for Special Provisions, etc. concluded the investment partnership contract pertaining to the Written Application for Special Provisions, etc. and other particulars specified by Ministry of Finance Order, and must preserve that book pursuant to the provisions of Ministry of Finance Order.
- (13) The nonresident prescribed in Article 41-21, paragraph (9) of the Act must submit the document prescribed in the same paragraph to the competent district director of the tax office having jurisdiction over the place for tax payment, no later than March 15 of the year following the year containing the day on which they have obtained any amount of income categorized as domestic source income prescribed in the same paragraph.
- (14) Where a nonresident or foreign corporation who is a partner having concluded an investment partnership contract and who has not satisfied the requirements listed in Article 41-21, paragraph (1), item (v) of the Act

(hereinafter referred to as the "Item (v) Requirement" in this paragraph and the following paragraph) by the time of the conclusion of the investment partnership contract, comes to satisfy the Item (v) Requirement in respect of the investment partnership contract, with regard to the application of the provisions of paragraph (3) of the same Article to the investment partnership contract in the case where the nonresident or foreign corporation satisfies the requirements listed in paragraph (1), items (i) through (iv) of the same Article in respect of the investment partnership contract continuously during the period from the date of conclusion until the day on which the nonresident or foreign corporation comes to satisfy the Item (v) Requirement, the phrase "date of conclusion of " in paragraph (3) of the same Article is deemed to be replaced with "the day on which the nonresident or foreign corporation comes to satisfy the requirements listed in paragraph (1), item (v) in respect of"; and the phrase "items of paragraph (1)" in the same paragraph is deemed to be replaced with "items of the same paragraph".

- (15) Where a nonresident or foreign corporation who is a partner having concluded two or more investment partnership contracts and who has not satisfied the Item (v) Requirement at the time of the conclusion of each investment partnership contract, would come to satisfy the Item (v) Requirement in respect of one of the relevant two or more investment partnership contracts provided that the nonresident or foreign corporation does not conduct a business in Japan under an investment partnership contract(s) other than the relevant one of the two or more investment partnership contracts (hereinafter referred to as the "Other Investment Partnership Contract(s)" in this paragraph), with regard to the application of the provisions of Article 41-21, paragraph (3) of the Act to the relevant one investment partnership contract in the case where the nonresident or foreign corporation satisfies the requirements listed in paragraph (1), items (i) through (iv) of the same Article in respect of the investment partnership contract continuously during the period from the date of the conclusion of each investment partnership contract until the day on which the nonresident or foreign corporation comes to satisfy the Item (v) Requirement, the phrase "the date of conclusion of" in paragraph (3) of the same Article is deemed to be replaced with "the day on which the nonresident or foreign corporation comes to satisfy the requirements listed in paragraph (1), item (v) in respect of"; the phrase "items of paragraph (1)" in the same paragraph is deemed to be replaced with "items of the same paragraph"; and the phrase "on the date of the submission and thereafter" in the same paragraph is deemed to be replaced with "on the day on which the nonresident or foreign corporation has submitted written applications for special provisions in respect of all of the investment partnership contracts concluded thereby, and thereafter".

(16) Where a foreign corporation who seeks the application of the provisions of Article 41-21, paragraph (1) of the Act has submitted a written application for special provisions prescribed in paragraph (3) of the same Article pursuant to the provisions of the same paragraph as applied mutatis mutandis pursuant to Article 67-16, paragraph (2) of the Act or where the foreign corporation has submitted a written statement of change prescribed in Article 41-21, paragraph (7) of the Act pursuant to the provisions of the same paragraph as applied mutatis mutandis pursuant to Article 67-16, paragraph (2) of the Act, it is deemed that the foreign corporation has submitted a written application for special provisions prescribed in Article 41-21, paragraph (3) of the Act pursuant to the provisions of the same paragraph or a written statement of change prescribed in paragraph (7) of the same Article pursuant to the provisions of the same paragraph, respectively.

(Special Provisions for Taxable Income of Foreign Partner Having No Permanent Establishments)

Article 26-31 (1) Where a nonresident listed in Article 164, paragraph (1), item (iv) of the Income Tax Act (hereinafter referred to as a "Nonresident Having No Permanent Establishments in Japan" in this Article) has concluded an investment partnership contract subject to special provisions, etc. (meaning an investment partnership contract subject to special provisions and an investment partnership contract (limited to the investment partnership contract in the case where the Nonresident Having No Permanent Establishments in Japan satisfies the requirements listed in item (i) and item (ii) in respect of an investment partnership contract other than an investment partnership contract subject to special provisions; hereinafter the same applies in this paragraph and paragraph (5)); hereinafter the same applies in this Article), when the nonresident has transferred (meaning a transfer as prescribed in Article 291, paragraph (1), item (iii) of the Order for Enforcement of the Income Tax Act; hereinafter the same applies in this Article) shares of or capital contributions to a domestic corporation that satisfy the requirements listed in the items of paragraph (6) of the same Article (including the case where the domestic corporation is deemed, pursuant to the provisions of Article 291, paragraph (7) of the same Order, to have conducted the transfer of shares or capital contributions as prescribed in paragraph (6), item (ii) of the same Article that satisfies the requirements listed in the same item, and limited to the case where the nonresident satisfies the requirements listed in item (iii) in respect of the shares or capital contributions of a domestic corporation), with regard to the transfer of shares of or capital contributions to the domestic corporation, the provisions of Article 291 of the same Order apply by deeming that the person listed in paragraph (4), item (iii) of the same Article pertaining

to the investment partnership contract subject to special provisions, etc. is not included in the scope of specially-related shareholders, etc. prescribed in paragraph (6) and paragraph (7) of the same Article:

- (i) for the period within the three years preceding or including the year containing the date of transfer (hereinafter referred to as the "Year Containing the Date of Transfer" in this paragraph and paragraph (5)), during which the nonresident has been under an investment partnership contract, they have been a limited liability partner prescribed in Article 41-21, paragraph (2), item (iii) of the Act of an investment partnership that is established by the investment partnership contract;
  - (ii) for the period within the three years preceding or including the Year Containing the Date of Transfer, during which the nonresident has been under an investment partnership contract, they have not performed any act listed in the items of paragraph (1) of the preceding Article pertaining to the business conducted under the investment partnership contract;
  - (iii) at any time within the three years preceding or including the Year Containing the Date of Transfer, the specially-related shareholder, etc. (excluding the person listed in Article 291, paragraph (4), item (iii) of the Order for Enforcement of Income Tax Act pertaining to an investment partnership contract subject to special provisions, etc.) of a domestic corporation set forth in paragraph (1), item (iii), (b) of the same Article which pertains to the Nonresident Having No Permanent Establishments in Japan, has not held shares or capital contributions that account for 25 percent or more of the total number or total amount of issued shares of or capital contributions to the domestic corporation (in the case where the specially-related shareholder, etc. is a person listed in paragraph (4), item (iii) of the same Article pertaining to the partnership contract prescribed in the same item (excluding the investment partnership contract subject to special provisions, etc.), limited to those that are partnership property set forth in the same item).
- (2) The provisions of paragraph (2) of the preceding Article apply mutatis mutandis in the case of applying the provisions of item (ii) of the preceding paragraph. In this case, the phrase "investment partnership contract subject to special provisions (meaning an investment partnership contract subject to the provisions of Article 41-21, paragraph (1), item (ii) of the Act, which is concluded by a nonresident or foreign corporation who is subject to the provisions of the same paragraph; hereinafter the same applies in this Article and the following Article)" in paragraph (2) of the same Article is deemed to be replaced with "investment partnership contract (meaning an investment partnership contract prescribed in paragraph (1) of the following Article; hereinafter the same applies in this paragraph)"; and the phrase "the



- investment partnership contract subject to special provisions" in the same paragraph is deemed to be replaced with "the investment partnership contract".
- (3) Where a Nonresident Having No Permanent Establishments in Japan has transferred the shares of or capital contributions to a domestic corporation which are partnership property prescribed in article 41-21, paragraph (2), item (iv) of the Act (hereinafter referred to as "Investment Partnership Property" in this paragraph and the following paragraph) pertaining to the investment partnership contract subject to special provisions, etc. concluded by the nonresident and which fall under the following, with regard to the transfer of shares or capital contributions, the provisions of paragraph (1) do not apply:
- (i) as of the date of transfer, the nonresident has held continuously the shares or capital contributions of the domestic corporation, which are the Investment Partnership Property and have been transferred by the nonresident, for a period of only less than one year since the day following the date of the acquisition thereof as the Investment Partnership Property (excluding those listed in the following item);
  - (ii) the shares or capital contributions fall under the category of shares of a bank under special crisis management as prescribed in Article 111, paragraph (2) of the Deposit Insurance Act that the Deposit Insurance Corporation acquires pursuant to the provisions of Article 112, paragraph (1) of the same Act, which are shares of the bank under special crisis management that the nonresident acquires from the Deposit Insurance Corporation in the case where the Deposit Insurance Corporation transfers the shares of the bank under special crisis management pursuant to the provisions of Article 120, paragraph (1), item (iv) of the same Act.
- (4) The determination as to whether or not the shares of or capital contributions to a domestic corporation which are Investment Partnership Property and have been transferred by a Nonresident Having No Permanent Establishments in Japan (hereinafter referred to as the "Transferred Shares, etc." in this paragraph) fall under the category of shares or capital contributions listed in item (i) of the preceding paragraph is to be made as of the day of acquiring the same issue of shares of or capital contributions to a domestic corporation that are deemed to have been transferred in the case where the same issue of shares of (excluding the shares listed in item (ii) of the same paragraph) or contributions to a domestic corporation as the Transferred Shares, etc. that have been acquired as the Investment Partnership Property prior to the date of the transfer are deemed to have been transferred successively, starting from those acquired as the Investment Partnership Property earlier.
- (5) The provisions of paragraph (1) apply only where a Nonresident Having No Permanent Establishments in Japan has submitted a document stating to the effect that they seek the application of the provisions of the same paragraph,

their name and address (in the case of a Nonresident Having No Permanent Establishments in Japan who has a residence in Japan, their residence), and other particulars specified by Ministry of Finance Order (in the case of seeking the application of the provisions of the same paragraph with regard to an investment partnership contract, limited to the document with a document specified by Ministry of Finance Order as a document certifying that they satisfy the requirements listed in item (i) and item (ii) of the same paragraph pertaining to the investment partnership contract) to the competent district director of the tax office having jurisdiction over the place for tax payment, no later than March 15 of the year following the Year Containing the Date of Transfer.

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

Article 27 (1) With respect to the place for tax payment of income tax to be collected, pursuant to the provisions of Article 42, paragraph (1) of the Act, for the payment of the remuneration paid by a tax-exempt entertainment corporation, etc. prescribed in Article 42, paragraph (1) of the Act (referred to as a "tax-exempt entertainment corporation, etc." in paragraph (3)) to entertainers, etc. for their provision of services, the term "the place prescribed in those items" in Article 55 of the Order for Enforcement of the Income Tax Act is deemed to be replaced with "the place prescribed in those items (with respect to the remuneration paid by a tax-exempt entertainment corporation, etc. prescribed in Article 42, paragraph (1) (Special Provisions for Withholding at Source of Remuneration Paid by Tax-Exempt Entertainment Corporations to Entertainers for Their Provision of Services) of the Act on Special Measures Concerning Taxation (hereinafter referred to as a "Tax-Exempt Entertainment Corporation, etc." in this Article), outside Japan, to entertainers, etc. listed in the items of the same paragraph for their provision of services out of consideration for the provision of the services of entertainers, etc. prescribed in the same paragraph (hereinafter referred to as the "Consideration for the Provision of the Services of Entertainers, etc." in this Article), the location of an office, business office or any other place equivalent thereto located in Japan of a person who pays the Consideration for the Provision of the Services of Entertainers, etc. of the entertainers, etc. to the Tax-Exempt Entertainment Corporation, etc. (where the person falls under the category of a Tax-Exempt Entertainment Corporation, etc., a person who pays the Consideration for the Provision of the Services of Entertainers, etc. to the person) (where there are two or more locations, the principal location))".

(2) With respect to the application of the provisions of Article 264 of the Order for

Enforcement of the Income Tax Act where the provisions of Article 42, paragraph (1) of the Act are applied, the term "Article 212, paragraph (1) (Withholding Liability for Income of Nonresidents or Corporations) of the Act" in the same Article is deemed to be replaced with "Article 212, paragraph (1) (Withholding Liability for Income of Nonresidents or Corporations) of the Act or Article 42, paragraph (1) (Special Provisions for Withholding at Source of Remuneration Paid by Tax-Exempt Entertainment Corporations to Entertainers for Their Provision of Services) of the Act on Special Measures Concerning Taxation".

- (3) Where a Tax-Exempt Entertainment Corporation, etc. seeks the application of the provisions of Article 179 and Article 213, paragraph (1) of the Income Tax Act in which the terms and phrases were replaced pursuant to the provisions of Article 42, paragraph (3) of the Act with respect to the consideration listed in Article 161, item (ii) of the Income Tax Act, which they receive for the provision of the services of entertainers, etc. prescribed in Article 42, paragraph (1) of the Act, the Tax-Exempt Entertainment Corporation, etc. must, when receiving payment of the consideration, submit a document containing the particulars specified by Ministry of Finance Order, via a person who pays the consideration, to the competent district director having jurisdiction over the place for tax payment of the income tax to be collected and paid for the consideration by the defrayer pursuant to the provisions of Article 212 of the Income Tax Act.

(Special Provisions for Taxation on Interest Received by Foreign Financial Institutions from Bond Transactions with Repurchase/Resale Agreements)

Article 27-2 (1) The requirements specified by Cabinet Order prescribed in Article 42-2, paragraph (1) of the Act are as follows (where a specified financial institution, etc. prescribed in the same paragraph (hereinafter referred to as a "Specified Financial Institution, etc." in this Article) is the Bank of Japan, the requirements listed in item (i) and item (iii)):

- (i) in the bond transaction with a repurchase/resale agreement prescribed in Article 283, paragraph (4) of the Order for Enforcement of the Income Tax Act (referred to as "bond transaction with a repurchase/resale agreement" in the following item and item (iii)), the period between the date of the transfer or purchase of the bonds and the date of the repurchase or resale of the bonds do not exceed six months;
- (ii) with respect to the bond transaction with a repurchase/resale agreement, an agreement has been made on collective clearing prescribed in Article 3 of the Act on Collective Clearing of Specified Financial Transactions Conducted by Financial Institutions, etc. (Act No. 108 of 1998);
- (iii) the value of the bonds pertaining to the bond transaction with a

- repurchase/resale agreement on the day on which the agreement was made with regard to the bond transaction with a repurchase/resale agreement is not less than the value agreed for the bond transaction with a repurchase/resale agreement.
- (2) The interest specified by Cabinet Order prescribed in Article 42-2, paragraph (1) of the Act is the interest to be received by a foreign financial institution, etc. prescribed in the same paragraph on which no income tax is to be imposed pursuant to the provisions of Article 7 of the Act.
- (3) The bonds specified by Cabinet Order prescribed in Article 42-2, paragraph (1) of the Act are any of the bonds listed as follows:
- (i) bonds issued or guaranteed by a foreign corporation listed as follows:
    - (a) a foreign corporation 50 percent or more of whose capital contributions or obligations were made by a foreign government;
    - (b) a foreign corporation established based on the provisions of the special laws and regulations in a foreign state whose business is conducted under the management of the government of the foreign state;
  - (ii) bonds issued or guaranteed by an international organization established based on an international agreement between governments;
  - (iii) bonds issued by a corporation which was established based on the laws and regulations of a member state of the OECD other than Japan and which is engaged in a banking business in that state based on the laws and regulations of the state.
- (4) Whether or not a foreign corporation listed in Article 42-2, paragraph (4), item (i), (a) of the Act out of foreign financial institutions, etc. (meaning foreign financial institutions, etc. prescribed in the same item; hereinafter the same applies in this Article) falls under the category of a foreign corporation listed in the items of Article 42-2, paragraph (2) of the Act is to be determined according to its status at the end of the business year immediately prior to the business year containing the day on which the foreign financial institution, etc. intends to submit a written application for tax exemption (meaning a written application for tax exemption prescribed in Article 42-2, paragraph (5) of the Act; hereinafter the same applies in this Article) and the day preceding the day on which the foreign financial institution, etc. is to receive payment of specified interest (meaning specified interest prescribed in Article 42-2, paragraph (1) of the Act; hereinafter the same applies in this Article) after submitting the written application for tax exemption.
- (5) A foreign financial institution, etc. which seeks the application of the provisions of Article 42-2, paragraph (1) of the Act must, when it intends to receive payment of specified interest from a Specified Financial Institution, etc. for the first time, submit a written application for tax exemption to the district director prescribed in Article 42-2, paragraph (5) of the Act, via an office,

business office, or any other establishment equivalent thereto (hereinafter referred to as "Offices, etc." in this paragraph and paragraph (9)) of the Specified Financial Institution, etc. in charge of handling payment of the specified interest (where payment of the specified interest is handled at two or more Offices, etc. held by the Specified Financial Institution, etc., via respective offices at the time when payment is handled for the first time respectively) by the day preceding the day on which the foreign financial institution, etc. is to receive the specified interest.

- (6) A foreign financial institution, etc. which seeks the application of the provisions of Article 42-2, paragraph (1) of the Act must, when it has not been entered or recorded separately in the books prescribed in Article 42-2, paragraph (10) of the Act of a Specified Financial Institution, etc. which pays specified interest to the foreign financial institution, etc., submit a written application for tax exemption to the district director prescribed in Article 42-2, paragraph (5) of the Act pursuant to the provisions of the same paragraph.
- (7) Where a foreign financial institution, etc. which had previously received the application of the provisions of Article 42-2, paragraph (1) of the Act has become unable to receive the application of those provisions based on the provisions of paragraph (2) of the same Article and subsequently seeks the application of the provisions of Article 42-2, paragraph (1) of the Act again, the foreign financial institution, etc. must submit a written application for tax exemption to the district director prescribed in Article 42-2, paragraph (5) of the Act, by the day preceding the day on which it is to receive the specified interest, in respect of which it seeks the application of the provisions of the same paragraph.
- (8) The documents specified by Cabinet Order prescribed in Article 42-2, paragraph (7) of the Act are any of the foreign corporation's certificate of registered particulars of the corporation, receipt for national tax or local tax, certificate of tax payment or any other document specified by Ministry of Finance Order.
- (9) A Specified Financial Institution, etc. must, when it has received a written application for tax exemption or a written application prescribed in Article 42-2, paragraph (8) of the Act at its Offices, etc., submit the written applications to the district director prescribed in Article 42-2, paragraph (5) of the Act, by the final day of the month following the month involving the date of the receipt, and create copies of the written applications (including those equivalent thereto) and preserve them pursuant to the provisions of Ministry of Finance Order.
- (10) In the case referred to in Article 42-2, paragraph (8) of the Act, when a written application prescribed in the same paragraph has been submitted to the district director prescribed in the same paragraph, it is deemed that the

submission has been made at the time when the person who pays specified interest set forth in the same paragraph received the written application.

- (11) A Specified Financial Institution, etc. must, when the contract for a bond transaction with a repurchase/resale agreement prescribed in Article 42-2, paragraph (1) of the Act has been concluded with a foreign financial institution, etc. which had submitted a written application for tax exemption, or when a written application prescribed in paragraph (8) of the same Article has been submitted by a person who had submitted the written application for tax exemption, enter or record the particulars prescribed in paragraph (10) of the same Article in the books for each person each time, and preserve those books pursuant to the provisions of Ministry of Finance Order.

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

#### **Section 8-2 Special Provisions for Taxation on Transactions with Foreign Affiliated Persons**

(Special Provisions for Taxation on Transactions with Foreign Affiliated Persons)

Article 39-12 (1) The special relationship specified by Cabinet Order as prescribed in Article 66-4, paragraph (1) of the Act is the following:

- (i) the relationship whereby either one of two corporations 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 of or capital contributions to the other corporation held by itself) (hereinafter referred to as the "Issued Shares, etc." through to paragraph (3));
- (ii) in the case where shares or capital contributions that account for 50 percent or more of the Issued Shares, etc. of two corporations are held respectively directly or indirectly by the same person (in the case where the person is an individual, the individual and an individual who has a special relationship specified by Cabinet Order as prescribed in Article 2, item (x) of the Corporation Tax Act with the individual; the same applies in item (v)), the relationship between those two corporations (excluding the relationship falling under the category of relationship listed in the preceding item);
- (iii) the relationship whereby the existence of any of the facts listed in the following or any other fact equivalent thereto (referred to as a "specified fact" in the following item and item (v)) enables either one of two corporations to determine substantially the whole or part of the other corporation's business policy (excluding the relationship falling under the category of relationship listed in the preceding two items):
  - (a) the fact that 50 percent or more of the officers of the relevant other

- corporation or any officers who have authority to represent the relevant other corporation are persons who concurrently serve as officers or employees of the relevant one of the two corporations or who used to serve as officers or employees of the relevant one of the two corporations;
- (b) the fact that the relevant other corporation depends on transactions with the relevant one of the two corporations for a considerable part of its business activities;
  - (c) the fact that the relevant other corporation procures a considerable part of funds necessary for its business activities by receiving loans from the relevant one of the two corporations or by obtaining guarantees from the relevant one of the two corporations;
- (iv) the relationship between one corporation and any of the following corporations (excluding the relationship falling under the categories of relationships listed in the preceding three items):
- (a) a corporation in a relationship whereby shares or capital contributions that account for 50 percent or more of its Issued Shares, etc. are held directly or indirectly by the relevant one corporation or the whole or part of its business policy can be substantially determined by the relevant one corporation due to the existence of a specified fact;
  - (b) a corporation in a relationship whereby shares or capital contributions that account for 50 percent or more of its Issued Shares, etc. are held directly or indirectly by a corporation listed in (a) or (c) or the whole or part of its business policy can be determined substantially by a corporation listed in (a) or (c) due to the existence of a specified fact;
  - (c) a corporation in a relationship whereby shares or capital contributions that account for 50 percent or more of its Issued Shares, etc. are held directly or indirectly by a corporation listed in (b) or the whole or part of its business policy can be substantially determined by a corporation listed in (b) due to the existence of a specified fact;
- (v) the relationship between two corporations whereby they fall respectively under any of the categories of corporations listed as follows (limited to the case where the person prescribed in (a) is the same person; excluding the relationship falling under the categories of relationships listed in the preceding items):
- (a) a corporation in a relationship whereby shares or capital contributions that account for 50 percent or more of its Issued Shares, etc. are held directly or indirectly by one person listed in (a) or (c) or the whole or part of its business policy can be substantially determined by one person listed in (a) or (c) due to the existence of a specified fact;
  - (b) a corporation in a relationship whereby shares or capital contributions that account for 50 percent or more of its Issued Shares, etc. are held

- directly or indirectly by a corporation listed in (a) or (c) or the whole or part of its business policy can be substantially determined by a corporation listed in (a) or (c) due to the existence of a specified fact;
- (c) a corporation in a relationship whereby shares or capital contributions that account for 50 percent or more of its Issued Shares, etc. are held directly or indirectly by a corporation listed in (b) or the whole or part of its business policy can be substantially determined by a corporation listed in (b) due to the existence of a specified fact.
- (2) In the case referred to in item (i) of the preceding paragraph, the determination as to whether one of two corporations holds directly or indirectly shares or capital contributions that account for 50 percent or more of the Issued Shares, etc. of the other corporation is to be made according to the ratio obtained by adding the ownership ratio for the shares, etc. of the relevant other corporation held directly by the relevant one of the two corporations (meaning the ratio of the number of the amount of the relevant other corporation's shares or capital contributions held by the relevant one of the two corporations out of the total Issued Shares, etc. of the relevant other corporation) and the ownership ratio for the shares, etc. of the relevant other corporation held indirectly by the relevant one of the two corporations.
- (3) The ownership ratio for the shares, etc. held indirectly as prescribed in the preceding paragraph means a ratio specified in the following items for the category of cases listed in the respective items (in the case where the ratio falls under both of the following items, the sum of the ratios specified as follows):
- (i) where shares or capital contributions that account for 50 percent or more of the issued shares, etc. of a corporation which is a shareholder, etc. (meaning a shareholder, etc. prescribed in Article 2, item (xiv) of the Corporation Tax Act; the same applies in the following item) of the other corporation set forth in the preceding paragraph are held by one of the two corporations set forth in the preceding paragraph: The ratio of the number or amount of shares of or capital contributions to the relevant other corporation held by the relevant corporation which is a shareholder, etc. out of the issued shares, etc. of the relevant other corporation (in the case where there are two or more of those corporations which are shareholders, etc., the sum of the ratios calculated for each of them);
- (ii) where one corporation or two or more corporations intervene between a corporation which is a shareholder, etc. of the other corporation set forth in the preceding paragraph (excluding a corporation which is a shareholder, etc. set forth in the preceding item that falls under the case listed in the same item) and the relevant one of the two corporations set forth in the preceding paragraph, and have a linkage with them through holding the issued shares, etc. (hereinafter that intervening corporation is referred to as a "Capital



Contribution-Related Corporation" in this item) (limited to the case where shares or capital contributions that account for 50 percent or more of the issued shares, etc. of a Capital Contribution-Related Corporations and the corporation which is a shareholder, etc. are held respectively by the relevant one of the two corporations or a Capital Contribution-Related Corporation (limited to one whose shares or capital contributions that account for 50 percent or more of its issued shares, etc. are held by the relevant one of the two corporations or other Capital Contribution-Related Corporations)): The ratio of the number of shares or amount of capital contributions to the relevant other corporation held by the corporation which is a shareholder, etc. out of the issued shares, etc. of the relevant other corporation (in the case where there are two or more of those corporations which are shareholders, etc., the sum of the ratios calculated for each of them).

- (4) The provisions of paragraph (2) apply mutatis mutandis to the determination of the relationship whereby the shares, etc. are held directly or indirectly as set forth in paragraph (1), items (ii), (iv) and (v).
- (5) The transaction specified by Cabinet Order as prescribed in Article 66-4, paragraph (1) of the Act is a transaction pertaining to the domestic source income listed in Article 141, items (i) through (iii) of the Corporation Tax Act (excluding income for which corporation tax is reduced or exempted pursuant to the provisions of the tax convention prescribed in Article 1-3, paragraph (1), item (ii)) of a foreign affiliated person prescribed in Article 66-4, paragraph (1) of the Act, in accordance with the category of foreign corporation listed in those items which is applicable to the foreign affiliated person:
- (6) The normal profit margin specified by Cabinet Order as prescribed in Article 66-4, paragraph (2), item (i), (b) of the Act is the ratio of the amount of gross profits gained by a person (hereinafter referred to as a "Reseller" in this paragraph and paragraph (8), item (ii)) who purchased the same or similar inventory assets as those for a foreign affiliated transaction prescribed in paragraph (1) of the same Article (hereinafter referred to as a "Foreign Affiliated Transaction" in this Article) from a person (hereinafter referred to as a "Non-Affiliated Person" through to paragraph (8)) who is not in a special relationship (meaning a special relationship prescribed in Article 66-4, paragraph (1) of the Act) through a transaction to sell the same or similar inventory assets to a Non-Affiliated Person (hereinafter referred to as a "Comparable Transaction" in this paragraph) (the amount of gross profits means the amount obtained by deducting the sum of the costs of the inventory assets for the Comparable Transaction from the total revenue arising from the sale of the inventory assets for the Comparable Transaction), against the sum of the revenue; provided, however, that in the case where functions performed by the selling side or any other particulars differ between a Comparable

Transaction and a transaction in which the purchasing side of the inventory assets for the Foreign Affiliated Transaction sold the inventory assets to a Non-Affiliated Person, the normal profit margin is the ratio after making a necessary adjustment for the differences in ratios caused by the disparity.

(7) The normal profit margin specified by Cabinet Order as prescribed in Article 66-4, paragraph (2), item (i), (c) of the Act is the ratio of the amount of gross profits gained by a person who acquired the same or similar inventory assets as those for a Foreign Affiliated Transaction through the purchase (limited to a purchase from a Non-Affiliated Person), manufacture, or any other acts (hereinafter that person is referred to as a "seller" in this paragraph and item (iii) of the following paragraph), through a transaction to sell the same or similar inventory assets to a Non-Affiliated Person (hereinafter referred to as a "Comparable Transaction" in this paragraph) (the amount of gross profits means the amount obtained by deducting the sum of the costs of the inventory assets for the Comparable Transaction from the total revenue arising from the sale of the inventory assets for the Comparable Transaction), against the sum of the costs; provided, however, that in the case where functions performed by the selling side and other particulars differ between a Comparable Transaction and the Foreign Affiliated Transaction, the normal profit margin is the ratio after making a necessary adjustment, necessary for the differences in ratios caused by the disparity.

(8) The method specified by Cabinet Order as prescribed in Article 66-4, paragraph (2), item (i), (d) of the Act is the method listed as follows:

(i) the method which uses, as the amount of consideration for a Foreign Affiliated Transaction, the amount calculated by deeming that the income, which arises from the purchase, manufacture, sale, or any other acts conducted with regard to inventory assets for the Foreign Affiliated Transaction by a corporation prescribed in Article 66-4, paragraph (1) of the Act or a foreign affiliated person prescribed in the same paragraph who is related to the corporation, is to be attributed to the corporation or the foreign affiliated person, in accordance with the amount of expenses paid or the value of fixed assets used by those persons for performing those acts with regard to the inventory, or other factors sufficient to estimate the degree of contribution of these persons to generate the income;

(ii) the method which uses, as the amount of consideration for a Foreign Affiliated Transaction, the amount that remains after deducting, from the amount of consideration gained by the buyer of inventory assets for a Foreign Affiliated Transaction for having sold the inventory assets to a non-affiliated person (hereinafter the amount of consideration is referred to as the "resale price" in this item), the amount obtained by multiplying the resale price by the ratio of the amount listed in (a) against the amount listed in (b) (where

- functions performed by the selling side or any other particulars differ between a transaction in which the Reseller has sold the same or similar inventory assets as the inventory assets to a non-affiliated person (hereinafter referred to as a "Comparable Transaction" in this item) and a transaction in which the purchasing side of the inventory assets for the Foreign Affiliated Transaction sold the inventory assets to a non-affiliated person, by the ratio after making a necessary adjustment for the differences in ratios caused by the disparity) and then adding the selling expenses and general administrative expenses needed for the sale of the inventory assets for the Foreign Affiliated Transaction:
- (a) the sum of the operating profits arising from the sale of the inventory assets for the Comparable Transaction;
  - (b) the total revenue arising from the sale of the inventory assets for the Comparable Transaction;
- (iii) the method which uses, as the amount of consideration for a Foreign Affiliated Transaction, the amount obtained by adding [1] the amount of the costs spent by the selling side of the inventory assets for a Foreign Affiliated Transaction for acquiring the inventory assets through the purchase, manufacture or any other acts (hereinafter referred to as the "Amount of Acquisition Costs" in this item), [2] the amount obtained by multiplying the amount listed in (a) by the ratio of the amount listed in (b) against the amount listed in (c) (where functions performed by the selling side or any other particulars differ between a transaction in which a seller sold the same or similar inventory assets as the inventory assets to a non-affiliated person (hereinafter referred to as a "Comparable Transaction" in this item) and the Foreign Affiliated Transaction, by the ratio after making a necessary adjustment for the differences in ratios caused by the disparity), and [3] the sum of the amounts listed in (a), 2.:
- (a) the sum of the amounts listed as follows:
    - 1. the Amount of the Acquisition Costs;
    - 2. the amount of the selling expenses and general administrative expenses needed for the sale of the inventory assets for the Foreign Affiliated Transaction;
  - (b) the sum of the operating profits arising from the sale of the inventory assets for the Comparable Transaction;
  - (c) the amount obtained by deducting the amount listed in (b) from the total revenue arising from the sale of the inventory assets for the Comparable Transaction;
- (iv) the method equivalent to the methods listed in the preceding two items.
- (9) The case specified by Cabinet Order as prescribed in Article 66-4, paragraph (6) of the Act is the case where it has been determined in advance at the time

of a transaction between a corporation set forth in the same paragraph and a non-affiliated person set forth in the same paragraph (hereinafter referred to as a "Non-Affiliated Person" in this paragraph and the following paragraph), under a contract or the like, that the assets for the transaction are to be sold, transferred, lent or provided to a foreign affiliated person related to the corporation set forth in paragraph (6) of the same Article and where the amount of consideration for the sale, transfer, lending or provision is deemed to have been substantially determined between the corporation and the foreign affiliated person, and the case where it has been determined in advance at the time of a transaction between a foreign affiliated person related to the corporation set forth in the same paragraph and a Non-Affiliated Person, under a contract or the like, that the assets for the transaction are to be sold, transferred, lent or provided to a corporation set forth in the same paragraph and where the amount of consideration for the sale, transfer, lending or provision is deemed to have been substantially determined between the corporation and the foreign affiliated person.

(10) Notwithstanding the provisions of Article 66-4, paragraph (2) of the Act, the arm's length price prescribed in paragraph (1) of the same Article for a transaction that was deemed to be a Foreign Affiliated Transaction under the provisions of paragraph (6) of the same Article is the amount calculated by applying the provisions of paragraph (2) of the same Article by deeming that the transaction has been conducted between a corporation set forth in the preceding paragraph and a foreign affiliated person related to the corporation set forth in the same paragraph and by making a necessary adjustment with regard to the differences in the amount of consideration caused when a transaction between the corporation and the foreign affiliated person is conducted via a Non-Affiliated Person.

(11) The gross profit margin prescribed in Article 66-4, paragraph (7), item (i) of the Act or any other ratio specified by Cabinet Order as a ratio equivalent thereto is the ratio of the amount of gross profits gained by a corporation which is engaged in the same type of business and whose size and other details are similar as prescribed in the same item through the business for a business year containing the day on which a Foreign Affiliated Transaction set forth in the same item was conducted or for any other period equivalent thereto (the amount of gross profits mean the amount obtained by deducting the sum of the costs of inventory assets for the relevant business year or any other period equivalent thereto (where the business is other than that pertaining to the sale of inventory assets, the sum of equivalent costs or expenses; hereinafter referred to as the "Amount of Gross Costs" in this paragraph) from the total revenue arising from the sale of the inventory assets (where the business is other than that pertaining to the sale of inventory assets, the total revenue

pertaining to that business; hereinafter referred to as the "Amount of Gross Revenue" in this paragraph)) against the Amount of Gross Revenue or Gross Costs.

(12) The method specified by Cabinet Order as the method similar to the method specified by Cabinet Order as prescribed in Article 66-4, paragraph (2), item (i), (d) of the Act or the method listed in paragraph (2), item (ii), (b) of the same Article (limited to the method equal to that specified by the same Cabinet Order) as prescribed in paragraph (7), item (ii) of the same Article is the method listed in items (i) to (iv), in the case where a Foreign Affiliated Transaction is for the sale or purchase of inventory assets, and the method listed in item (i) or item (v), in the case where a Foreign Affiliated Transaction is for other than the sale or purchase of inventory assets:

(i) the method which uses, as the amount of consideration for a Foreign Affiliated Transaction, the amount calculated by deeming that the income, which arises from a business pertaining to a Foreign Affiliated Transaction set forth in Article 68-88, paragraph (6) of the Act for the business year containing the date on which the foreign affiliated transaction was conducted, based on financial statements containing the consolidated status of property and profits and losses of a corporate group which includes the consolidated corporation and a foreign affiliated person (meaning a foreign affiliated person prescribed in paragraph (1) of the same Article) pertaining to the Foreign Affiliated Transaction conducted by the consolidated corporation (where the income arising from the business is not recorded separately from the income arising from other businesses in the financial statements, the income arising from businesses including that business; hereinafter the same applies in this item), or for any other period equivalent thereto, is to be attributed to those persons, in accordance with the amount of expenses paid or the value of fixed assets used by those persons for conducting the Foreign Affiliated Transaction (where the amount of expenses or the value of fixed assets spent or used for the business is not recorded separately from the amount of expenses or the value of the fixed assets spent or used for other businesses in the financial statements, the amount of expenses or the value of the fixed assets spent or used for businesses including that business), or other factors sufficient to estimate the degree of the contribution of those persons to generate the income;

(ii) the method which uses, as the amount of consideration for a Foreign Affiliated Transaction, the amount that remains after deducting, from the amount of consideration gained by the purchasing side of inventory assets for a Foreign Affiliated Transaction for having sold the inventory assets to a non-affiliated person (meaning a person who is not in a special relationship therewith as prescribed in Article 66-4, paragraph (1) of the Act) (hereinafter

- the amount of consideration is referred to as the "resale price" in this item), from the amount obtained by multiplying the resale price by the ratio of the amount listed in (a) against the amount listed in (b) and then adding the selling expenses and general administrative expenses needed for the sale of the inventory assets for the Foreign Affiliated Transaction:
- (a) the sum of the operating profits gained by a corporation which is engaged in the same or a similar type of business as those pertaining to the Foreign Affiliated Transaction and whose size and other details are similar (hereinafter referred to as a "Comparable Business" in this item) through the sale of inventory assets for the Comparable Business for a business year containing the day on which the Foreign Affiliated Transaction was conducted or for any other period equivalent thereto (hereinafter referred to as a "Comparable Business Year" in this item);
  - (b) the total revenue arising from the sale of the inventory assets for a Comparable Business for the Comparable Business Year;
  - (iii) the method which uses, as the amount of consideration for a Foreign Affiliated Transaction, the amount obtained by adding the amount of the costs spent by the selling side of inventory assets for the Foreign Affiliated Transaction for acquiring the inventory assets through the purchase, manufacture or any other acts (hereinafter referred to as the "Amount of Acquisition Costs" in this item), the amount obtained by multiplying the amount listed in (a) by the ratio of the amount listed in (b) against the amount listed in (c), and the sum of the amounts listed in (a), 2.:
  - (a) the sum of the amounts listed as follows:
    1. the Amount of Acquisition Costs;
    2. the amount of the selling expenses and general administrative expenses needed for the sale of the inventory assets for the Foreign Affiliated Transaction;
  - (b) the sum of the operating profits gained by a corporation which is engaged in the same or a similar type of business as those pertaining to the Foreign Affiliated Transaction and whose size and other details are similar (hereinafter referred to as a "Comparable Business" in this item) through the sale of inventory assets for the Comparable Business for a business year containing the day on which the Foreign Affiliated Transaction was conducted or for any other period equivalent thereto (hereinafter referred to as a "Comparable Business Year" in this item);
  - (c) the amount obtained by deducting the amount listed in (b) from the total revenue arising from the sale of the inventory assets for the Comparable Business for the Comparable Business Year;
  - (iv) the method equivalent to those listed in the preceding two items;
  - (v) the method equal to those listed in the preceding three items.

- (13) The requirements specified by Cabinet Order as prescribed in Article 66-4, paragraph (19) of the Act are the requirements listed as follows:
- (i) with regard to the arm's length price prescribed in Article 66-4, paragraph (19) of the Act which pertains to a Foreign Affiliated Transaction prescribed in the same paragraph, the Minister of Finance has reached an agreement, under a tax convention prescribed in the same paragraph, with the competent authority of a contracting state other than Japan of the tax convention;
  - (ii) the contracting state other than Japan as set forth in the preceding item reduces a tax for a foreign affiliated person prescribed in Article 66-4, paragraph (19) of the Act, based on the agreement set forth in the preceding item, and does not add to the amount to be refunded due to the tax reduction, the part of the amount equivalent to the interest on a refund that corresponds to the base period for the calculation for which the Minister of Finance has reached an agreement with the competent authority of the contracting state other than Japan.
- (14) The delinquent tax imposed with regard to the corporation tax payable as prescribed in Article 66-4, paragraph (19) of the Act is the delinquent tax to be imposed on the amount obtained by deducting the amount equivalent to the corporation tax payable where the provisions of paragraph (1) of the same Article do not apply from the corporation tax payable where the provisions of the same paragraph apply.
- (15) Where the provisions of Article 66-4, paragraph (1), paragraph (2), item (i), (a) or (b), or paragraph (6) of the Act or the provisions of paragraph (6) apply, the existence or not of any special relationship prescribed in these provisions is to be determined according to its status at the time when the respective transactions were conducted.

(Application Procedures for Grace of Tax Payment Pertaining to Special Provisions for Taxation on Transactions with Foreign Affiliated Persons)

Article 39-12-2 (1) The amount calculated as specified by Cabinet Order as the amount of corporation tax and additional tax for the corporation tax prescribed in Article 66-4-2, paragraph (1) of the Act is the sum of the amounts listed as follows:

- (i) the amount obtained by deducting the amount of corporation tax payable where the calculation has been made by deeming that the reassessment or determination for the objection prescribed in Article 66-4-2, paragraph (1) of the Act (meaning the reassessment or determination listed in Article 66-4, paragraph (16), item (i) of the Act; hereinafter the same applies in this item and paragraph (3), item (ii)) does not cover the part pertaining to the corporation tax prescribed in Article 66-4-2, paragraph (1) of the Act

- (referred to as the "amount of corporation tax not under grace" in the following item) from the amount of corporation tax payable based on the reassessment or determination (referred to as the "amount of corporation tax based on the reassessment or determination" in the following item);
- (ii) the amount obtained by deducting the amount of additional tax (meaning the additional tax prescribed in Article 69 of the Act on General Rules for National Taxes; hereinafter the same applies in this item) to be imposed based on the amount of corporation tax not under grace from the amount of additional tax to be imposed based on the amount of corporation tax based on the reassessment or determination.
- (2) The case where there is no agreement prescribed in Article 66-4-2, paragraph (1) of the Act or any other case specified by Cabinet Order is the case listed respectively in the following items, and the date specified by Cabinet Order prescribed in the same paragraph is the date on which the Commissioner of the National Tax Agency notified the fact that the case falls under any of those set forth in the relevant items:
- (i) where the Commissioner of the National Tax Agency finds that an agreement set forth in Article 66-4-2, paragraph (1) of the Act (referred to an "agreement" in the following item and item (iii)) cannot be reached even if the consultation prescribed in the same paragraph (hereinafter referred to as a "Mutual Consultation" in this paragraph) is continued (excluding the case listed in the items of Article 66-4-2, paragraph (5) of the Act), when they have made a request for the termination of the Mutual Consultation to the competent authority of the other contracting state pertaining to the Mutual Consultation (meaning a contracting state other than Japan of a tax convention prescribed in Article 1-3, paragraph (1), item (ii); the same applies in the following item) and has obtained consent from the competent authority;
  - (ii) where the competent authority of the other contracting state pertaining to a Mutual Consultation finds that an agreement cannot be reached even if the Mutual Consultation were continued, when the Commissioner of the National Tax Agency has received a request for the termination of the Mutual Consultation from the competent authority and has given their consent;
  - (iii) where an agreement has been reached on the amount of corporation tax prescribed in Article 66-4-2, paragraph (1) of the Act, when the agreement is not to change the amount of corporation tax.
- (3) A person intending to receive a grace of tax payment under the provisions of Article 66-4-2, paragraph (1) of the Act must submit a written application containing the particulars listed as follows along with a document certifying that they have filed an objection set forth in the same paragraph and other



documents specified by Ministry of Finance Order to the district director, etc. prescribed in Article 46, paragraph (1) of the Act on General Rules for National Taxes:

- (i) the name and place for tax payment of a corporation intending to receive the grace of tax payment (where the place for tax payment and the location of the head office or principal office are different, the corporation's name, place for tax payment and location of the head office or principal office);
  - (ii) the business year, due date and the amount of payable corporation tax based on the reassessment or determination;
  - (iii) the amount for which the corporation intends to receive a grace of tax payment out of the amount set forth in the preceding item;
  - (iv) where the amount for which the corporation intends to receive a grace of tax payment exceeds 500,000 yen, the type, amount, value and location of the security listed in the items of Article 50 of the Act on General Rules for National Taxes which it intends to provide at the time of filing the application (when the security is a guarantee by a guarantor, the guarantor's name and the location, address or domicile of their head office or principal office) and any other particulars for reference concerning the security (where there is any special circumstance whereby the corporation cannot provide security, the circumstance).
- (4) With respect to the application of the provisions of Article 23, paragraph (1) of the Order for Enforcement of the Act on General Rules for National Taxes (Cabinet Order No. 135 of 1962), regarding the corporation tax for which a grace of tax payment has been received pursuant to the provisions of Article 66-4-2, paragraph (1) of the Act, the term "or national tax" in Article 23, paragraph (1) of the same Order is deemed to be replaced with "(including a grace of tax payment under the provisions of Article 66-4-2, paragraph (1) (Grace of Tax Payment under the Special Provisions for Taxation on Transactions with Foreign Affiliated Persons) of the Act on Special Measures Concerning Taxation) or national tax".

### **Section 8-3 Special Provisions for Taxation on Interest on Liabilities Payable to Foreign Controlling Shareholders**

(Special Provisions for Taxation on Interest on Liabilities Payable to Foreign Controlling Shareholders)

Article 39-13 (1) The amount calculated as specified by Cabinet Order as the amount equivalent to the excess part prescribed in Article 66-5, paragraph (1) of the Act is the amount specified respectively in the following items for the category of cases listed in the relevant items:

- (i) where the amount that remains after deducting the amount listed in (b)

from the amount listed in (a) is equivalent to or less than the amount listed in (c): The amount obtained by calculating the amount of expenses listed in the items of paragraph (15) which the domestic corporation pays for the relevant business year to a foreign controlling shareholder, etc. (meaning a foreign controlling shareholder, etc. prescribed in Article 66-5, paragraph (4), item (i) of the Act; hereinafter the same applies in this Article) and a fund provider, etc. (meaning a fund provider, etc. prescribed in item (ii) of the same paragraph; hereinafter the same applies in this Article) related to the domestic corporation (those expenses are limited to what is to be paid, in the case prescribed in item (ii) or item (iii) of paragraph (13), when the interest on liabilities pertaining to the funds set forth in those items is included in the taxable income (meaning the taxable income prescribed in Article 66-5, paragraph (4), item (ix) of the Act; the same applies in (b)) of the person who is to receive payment of the interest; the amount of expenses is referred to as the "amount of guarantee charge, etc. for the taxable income" in the following item) and then multiplying the amount of expenses by the ratio obtained by dividing the amount that remains after deducting the amount listed in (c) from the amount listed in (a) (the remaining amount is referred to as the "amount exceeding the average balance of liabilities" in the following item and the following paragraph) by the amount listed in (b):

- (a) the average balance of liabilities (meaning the average balance of liabilities prescribed in Article 66-5, paragraph (4), item (v) of the Act; hereinafter the same applies in this Article) regarding the liabilities owed, for the relevant business year of the domestic corporation, to the foreign controlling shareholder, etc. and fund provider, etc. (meaning the liabilities owed to a foreign controlling shareholder, etc. and a fund provider, etc. prescribed in item (iv) of the same paragraph; hereinafter the same applies in this Article);
- (b) the average balance of liabilities regarding the liabilities specified by Cabinet Order prescribed in Article 66-5, paragraph (4), item (iv) of the Act owed to a fund provider, etc. (limited to the liabilities regarding those whose interest is included in the taxable income of a person who is to receive payment of the interest);
- (c) the amount obtained by multiplying the equity interest held by a foreign controlling shareholder, etc. for the relevant business year of the domestic corporation (meaning the equity interest held by a foreign controlling shareholder, etc. prescribed in Article 66-5, paragraph (4), item (vi) of the Act; the same applies in paragraph (4) and paragraph (7)) by three (where the domestic corporation receives the application of the provisions of paragraph (3) of the same Article, by the multiple number prescribed in the same paragraph);

- (ii) where the amount that remains after deducting the amount listed in (b) from the amount listed in (a) of the preceding item exceeds the amount listed in (c): The sum of the amounts listed as follows:
  - (a) the amount obtained by deducting the amount of guarantee charge, etc. for the taxable income from the amount of interest on liabilities, etc. (meaning the interest on liabilities, etc. prescribed in Article 66-5, paragraph (4), item (iii) of the Act; hereinafter the same applies in this Article) that the domestic corporation pays for the relevant business year to the foreign controlling shareholder, etc. and fund provider, etc. and then multiplying the amount that remains after deduction by the ratio obtained by dividing the amount that remains after deducting the amount listed in (b) of the preceding item from the amount exceeding the average balance of liabilities by the amount that remains after deducting the amount listed in (b) of the same item from the amount listed in (a) of the same item;
  - (b) the amount of guarantee charge, etc. for the taxable income.
- (2) With respect to the application of the provisions of the preceding paragraph where the amount that remains after deducting the amount obtained by multiplying the amount of equity capital (meaning the amount of equity capital prescribed in Article 66-5, paragraph (4), item (vii) of the Act; hereinafter the same applies in this Article) for the relevant business year of the domestic corporation by three from the average balance of liabilities regarding the total liabilities prescribed in Article 66-5, paragraph (1) of the Act for the relevant business year of the domestic corporation is less than the amount exceeding the average balance of liabilities for the relevant business year of the domestic corporation, in item (i) of the preceding paragraph, the term "the amount that remains after deducting the amount listed in (b) from the amount listed in (a) is equivalent to or less than the amount listed in (c)" is deemed to be replaced with "the amount that remains after deducting the amount obtained by multiplying the amount of equity capital prescribed in Article 66-5, paragraph (4), item (vii) of the Act for the relevant business year of the domestic corporation by three from the average balance of liabilities regarding the total liabilities prescribed in Article 66-5, paragraph (1) of the Act for the relevant business year of the domestic corporation (hereinafter the remaining amount is referred to as "the amount exceeding the average balance of the total liabilities" in this paragraph) is equivalent to or less than the amount listed in (c)"; the term "Article 66-5, paragraph (4), item (i) of the Act" is deemed to be replaced with "paragraph (4), item (i) of the same Article"; and the term "amount that remains after deducting the amount listed in (c) from the amount listed in (a) (the remaining amount is referred to as the "amount exceeding the average balance of liabilities" in the following item and the following paragraph)" is deemed to be replaced with "the amount exceeding the average

balance of the total liabilities"; and in item (ii) of the same paragraph, the term "the amount that remains after deducting the amount listed in (b) from the amount listed in (a) of the preceding item exceeds the amount listed in (c)" is deemed to be replaced with "the amount exceeding the average balance of the total liabilities exceeds the amount listed in (c)"; and the term "the amount exceeding the average balance of liabilities" is deemed to be replaced with "the amount exceeding the average balance of the total liabilities".

- (3) Where the provisions of Article 66-5, paragraph (1) of the Act apply, the amount of interest on liabilities, etc. to be paid to the foreign controlling shareholder, etc. and fund provider, etc. for the relevant business year is to be based on the amount posted as an expense for the relevant business year.
- (4) With respect to the application of the provisions of Article 66-5, paragraph (1) of the Act where there are two or more foreign controlling shareholders, etc. related to the domestic corporation, the average balance of liabilities regarding the liabilities owed to foreign controlling shareholders, etc. and fund providers, etc., equity interest held by foreign controlling shareholders, etc. and the amount of interest on liabilities, etc. to be paid to foreign controlling shareholders, etc. and fund providers, etc. are to be based on the sum of the average balance of liabilities regarding the liabilities owed to foreign controlling shareholders, etc. and fund providers, etc., equity interest held by foreign controlling shareholders, etc. and the amount of interest on liabilities, etc. to be paid to foreign controlling shareholders, etc. and fund providers, etc., respectively.
- (5) The average balance of liabilities pertaining to a specified bond transaction with a repurchase/resale agreement, etc. which is calculated as specified by Cabinet Order and is to be deducted from the average balance of liabilities regarding the liabilities owed to a foreign controlling shareholder, etc. and a fund provider, etc. prescribed in Article 66-5, paragraph (2) of the Act is the average balance of liabilities regarding the liabilities owed to a foreign controlling shareholder, etc. and a fund provider, etc. related to the domestic corporation which pertain to a specified bond transaction with a repurchase/resale agreement, etc. (meaning a specified bond transaction with a repurchase/resale agreement, etc. prescribed in Article 66-5, paragraph (4), item (viii) of the Act; the same applies in the following paragraph and paragraph (8)) (where the average balance of liabilities exceeds the average balance of assets regarding assets pertaining to a specified bond transaction with a repurchase/resale agreement, etc. (the average balance of assets means the amount calculated by a reasonable method as the average balance of the assets' book value for the relevant business year; the same applies in the following paragraph), that calculated average balance of liabilities is the average balance of assets; that average balance of assets is referred to as the

"average balance of liabilities after adjustment" in paragraph (8)).

- (6) The average balance of liabilities pertaining to a specified bond transaction with a repurchase/resale agreement, etc. which is calculated as specified by Cabinet Order and is to be deducted from the average balance of liabilities regarding the total liabilities for the relevant business year prescribed in Article 66-5, paragraph (2) of the Act is the average balance of liabilities regarding the total liabilities for the relevant business year (limited to those which are to be the cause of payment of interest on liabilities, etc.; the same applies in paragraph (10)) which pertain to a specified bond transaction with a repurchase/resale agreement, etc. (where the average balance of liabilities exceeds the average balance of assets regarding assets pertaining to a specified bond transaction with a repurchase/resale agreement, etc., that calculated average balance of liabilities is the average balance of assets).
- (7) The multiple number applicable to the equity interest held by a foreign controlling shareholder, etc. which is calculated as specified by Cabinet Order prescribed in Article 66-5, paragraph (2) of the Act is the multiple number obtained by calculating the average balance of liabilities by deducting the average balance of liabilities pertaining to a specified bond transaction with a repurchase/resale agreement, etc. calculated as specified by Cabinet Order prescribed in the same paragraph from the average balance of liabilities regarding the liabilities owed to a foreign controlling shareholder, etc. and a fund provider, etc. prescribed in the same paragraph and then dividing the calculated average balance of liabilities by the equity interest held by the foreign controlling shareholder, etc. related to the domestic corporation; and the multiple number applicable to the amount of equity capital which is calculated as specified by Cabinet Order prescribed in the same paragraph is the multiple number obtained by calculating the average balance of liabilities by deducting the average balance of liabilities pertaining to a specified bond transaction with a repurchase/resale agreement, etc. calculated as specified by Cabinet Order prescribed in the same paragraph from the average balance of liabilities regarding the total liabilities for the relevant business year prescribed in the same paragraph and then dividing the calculated average balance of liabilities by the amount of equity capital of the domestic corporation.
- (8) The amount of interest on liabilities, etc. pertaining to a specified bond transaction with a repurchase/resale agreement, etc. which is calculated as specified by Cabinet Order and is to be deducted from the amount of interest on liabilities, etc. to be paid to a foreign controlling shareholder, etc. and a fund provider, etc. prescribed in Article 66-5, paragraph (2) of the Act is the amount obtained by multiplying the amount of interest on liabilities, etc. to be paid to a foreign controlling shareholder, etc. and a fund provider, etc. related

to the domestic corporation which pertain to a specified bond transaction with a repurchase/resale agreement, etc. by the ratio obtained by dividing the average balance of liabilities after adjustment by the average balance of liabilities regarding liabilities pertaining to the specified bond transaction with a repurchase/resale agreement, etc.

- (9) With respect to the application of the provisions of paragraphs (1) to (4) in the case where the provisions of Article 66-5, paragraph (2) of the Act is applied, the term "and then multiplying the amount of expenses by the ratio" in paragraph (1), item (i) is deemed to be replaced with ", then deducting the amount obtained by multiplying the part of the amount of expenses that pertains to a specified bond transaction with a repurchase/resale agreement, etc. (meaning a specified bond transaction with a repurchase/resale agreement, etc. prescribed in Article 66-5, paragraph (4), item (viii) of the Act; hereinafter the same applies in this item) by the ratio obtained by dividing the average balance of liabilities after adjustment (meaning the average balance of liabilities after adjustment prescribed in paragraph (5); hereinafter the same applies in this item) regarding the liabilities for the amount by the average balance of liabilities (meaning the average balance of liabilities prescribed in paragraph (4), item (v) of the same Article; hereinafter the same applies in this Article) regarding the liabilities for the amount which pertains to a specified bond transaction with a repurchase/resale agreement, etc., and then multiplying the amount that remains after deduction by the ratio"; the term "The average balance of liabilities (meaning the average balance of liabilities prescribed in Article 66-5, paragraph (4), item (v) of the Act; hereinafter the same applies in this Article)" in (a) of paragraph (1), item (i) is deemed to be replaced with "The amount that remains after deducting the average balance of liabilities after adjustment from the average balance of liabilities"; the term "The average balance of liabilities" in (b) of the same item is deemed to be replaced with "The amount that remains after deducting the average balance of liabilities after adjustment regarding the liabilities from the average balance of liabilities"; the term "three" in (c) of the same item is deemed to be replaced with "two"; the term "The amount obtained by deducting the amount of guarantee charge, etc. for the taxable income" in (a) of paragraph (1), item (ii) is deemed to be replaced with "The amount obtained by deducting the sum of the amount of interest on liabilities, etc. pertaining to a specified bond transaction with a repurchase/resale agreement, etc. prescribed in paragraph (2) of the same Article and the amount of guarantee charge, etc. for the taxable income"; the term "where the amount that remains after deducting the amount" in paragraph (2) is deemed to be replaced with "where the amount that remains after deducting the sum of the average balance of liabilities regarding the average balance of liabilities which pertain to a specified bond

transaction with a repurchase/resale agreement, etc. prescribed in paragraph (6) and the amount"; and the term "by three" in the same paragraph is deemed to be replaced with "by two".

- (10) The percentage specified by Cabinet Order prescribed in Article 66-5, paragraph (3) of the Act is the percentage of the amount of the total liabilities of any other domestic corporation whose business size set forth in paragraph (3) of the same Article and other details are similar to those of a domestic corporation which seeks the application of the provisions of the same paragraph (hereinafter referred to as an "Applicable Corporation" in this paragraph) on the final day of any of the relevant other domestic corporation's relevant business years or consolidated business years that ended within three years until the final day of the Applicable Corporation's relevant business year (where the Applicable Corporation receives the application of the provisions of paragraph (2) of the same Article, the percentage of the remaining amount of the total liabilities after deducting the amount specified by Ministry of Finance Order) against the sum of the amounts of stated capital, statutory reserve, and surplus on the same day. In this case, where there are any fractions after two decimal places, they are to be rounded up.
- (11) The special relationship specified by Cabinet Order prescribed in Article 66-5, paragraph (4), item (i) of the Act is a relationship listed as follows:
- (i) a relationship whereby out of the total number or total amount of the issued shares or capital contributions of the domestic corporation (excluding its own shares or capital contributions held by the corporation) (hereinafter referred to as the "Issued Shares, etc." in this Article), 50 percent or more of the shares or capital contributions (hereinafter referred to as the "Shares, etc." in this Article) are held directly or indirectly by a foreign controlling shareholder, etc.;
  - (ii) where 50 percent or more of the Issued Shares, etc. of the domestic corporation and a foreign corporation are respectively held directly or indirectly by the same person (where the person is an individual, including an individual who has a special relationship prescribed in Article 4, paragraph (1) of the Order for Enforcement of the Corporation Tax Act with the individual), the relationship between the domestic corporation and the foreign corporation (excluding relationships falling under the category of relationships listed in the preceding item);
  - (iii) a relationship whereby the existence of the fact listed as follows or any other facts equivalent thereto between the domestic corporation and a nonresident (meaning a nonresident prescribed in Article 2, paragraph (1), item (i)-2 of the Act; the same applies in paragraph (28)) or a foreign corporation (hereinafter that nonresident or foreign corporation is referred to as a "nonresident, etc." in this item) enables the nonresident, etc. to

determine substantially the whole or a part of the domestic corporation's business policies (excluding relationships falling under the category of relationships listed in the preceding two items):

- (a) the fact that the domestic corporation depends on transactions with the nonresident, etc. for a considerable part of its business activities;
  - (b) the fact that the domestic corporation procures a considerable part of the funds necessary for its business activities by receiving loans from the nonresident, etc. or by obtaining guarantees from the nonresident, etc.;
  - (c) the fact that 50 percent or more of the officers of the domestic corporation or any officers who have authority to represent the domestic corporation are persons who concurrently serve as officers or employees of the foreign corporation or who used to serve as officers or employees of the foreign corporation.
- (12) The provisions of paragraph (2) and paragraph (3) of Article 39-12 apply *mutatis mutandis* to the determination as to whether or not 50 percent or more of the Issued Shares, etc. set forth in item (i) and item (ii) of the preceding paragraph are held directly or indirectly.
- (13) A person who provides a domestic corporation with funds and a person specified by Cabinet Order as being related to the provision of funds as prescribed in Article 66-5, paragraph (4), item (ii) of the Act is any of the following:
- (i) where it is found that a foreign controlling shareholder, etc. related to the domestic corporation has provided the domestic corporation with funds via a third party: the third party;
  - (ii) where it is found that a foreign controlling shareholder, etc. related to the domestic corporation has offered guarantees for the domestic corporation's liabilities to a third party and thereby the third party has provided the domestic corporation with funds: that third party;
  - (iii) where it is found that bonds lent by a foreign controlling shareholder, etc. related to the domestic corporation to the domestic corporation (including bonds lent by a third party to the domestic corporation based on guarantees for the domestic corporation's liabilities offered by the foreign controlling shareholder, etc.) have been provided to any other third party as security and have been transferred in a bond transaction with a repurchase/resale agreement (meaning a bond transaction with a repurchase/resale agreement prescribed in Article 42-2, paragraph (1) of the Act; the same applies in paragraph (27)) or lent in a cash-secured bond lending transaction (meaning a cash-secured bond lending transaction prescribed in Article 66-5, paragraph (4), item (viii) of the Act; the same applies in paragraph (27)) and thereby the relevant other third party has provided the domestic corporation with funds: that third party and the relevant other third party.



- (14) What is specified by Cabinet Order as being equivalent to interest on liabilities prescribed in Article 66-5, paragraph (4), item (iii) of the Act is the discount on bills, the amount of the shortage prescribed in Article 136-2, paragraph (1) of the Order for Enforcement of the Corporation Tax Act and any other moneys whose economic characteristics are equivalent to those of interest.
- (15) The expenses specified by Cabinet Order prescribed in Article 66-5, paragraph (4), item (iii) of the Act are the expenses listed as follows:
- (i) in the case prescribed in Article 13, item (ii), the guarantee charge for liabilities set forth in the same item which a domestic corporation set forth in the same item pays to a foreign controlling shareholder, etc. related to the domestic corporation;
  - (ii) in the case prescribed in Article 13, item (iii), the charge for bonds set forth in the same item or guarantee charge for liabilities set forth in the same item which a domestic corporation set forth in the same item pays to a foreign controlling shareholder, etc. related to the domestic corporation or the charge for bonds set forth in the same item which the domestic corporation pays to a third party set forth in the same item.
- (16) Any other expenses specified by Cabinet Order prescribed in Article 66-5, paragraph (4), item (iii) of the Act are interest on liabilities, etc. to be paid to a public corporation prescribed in Article 2, item (v) of the Corporation Tax Act or a corporation in the public interest, etc. prescribed in item (vi) of the same Article.
- (17) The liabilities specified by Cabinet Order prescribed in Article 66-5, paragraph (4), item (iv) of the Act are the liabilities set forth in the items of paragraph (13) in the cases prescribed in the relevant items.
- (18) The amount calculated as specified by Cabinet Order as the average amount of liabilities prescribed in Article 66-5, paragraph (4), item (v) of the Act is the amount calculated by a reasonable method as the average balance of the book value of the liabilities for the relevant business year.
- (19) The amount calculated as specified by Cabinet Order as the interest on a domestic corporation's net assets held by a foreign controlling shareholder, etc. as prescribed in Article 66-5, paragraph (4), item (vi) of the Act is the amount obtained by multiplying the amount of equity capital for the relevant business year of the domestic corporation by the ratio of the Shares, etc. regarding the domestic corporation held directly or indirectly by a foreign controlling shareholder, etc. on the final day of the relevant business year out of the domestic corporation's Issued Shares, etc.
- (20) The Shares, etc. held directly or indirectly as prescribed in the preceding paragraph are the total number or the sum of the domestic corporation's Shares, etc. held directly by a foreign controlling shareholder, etc. related to the domestic corporation and the domestic corporation's Shares, etc. held

indirectly by the foreign controlling shareholder, etc. (meaning the Shares, etc. calculated by multiplying the domestic corporation's Issued Shares, etc. by the ratio specified respectively in the following items for the category of cases listed in the relevant items (where falling under both of the following cases, the sum of the ratios specified respectively as follows)):

- (i) where the whole or a part of the Issued Shares, etc. of any other domestic corporation which is a shareholder, etc. (meaning a shareholder, etc. prescribed in Article 2, item (xiv) of the Corporation Tax Act; hereinafter the same applies in this item and paragraph (24)) of the domestic corporation are held by a foreign controlling shareholder, etc. related to the domestic corporation: The ratio obtained by multiplying the foreign controlling shareholder, etc.'s ratio of shareholding (meaning the ratio of the Shares, etc. held by a shareholder, etc. out of the total Issued Shares, etc.; hereinafter the same applies in this paragraph and paragraph (24)) pertaining to the relevant other domestic corporation by the relevant other domestic corporation's ratio of shareholding pertaining to the domestic corporation (where there are two or more other domestic corporations, the sum of the ratios calculated for each of them);
  - (ii) where a single domestic corporation or two or more domestic corporations intervene(s) between the domestic corporation and any other domestic corporation, the whole or a part of whose Issued Shares, etc. are held by a foreign controlling shareholder, etc. related to the domestic corporation (hereinafter that intervening domestic corporation is referred to as a "capital contribution-related domestic corporation" in this paragraph) and the foreign controlling shareholder, etc., the relevant other domestic corporation, capital contribution-related domestic corporation and the domestic corporation have a linkage through holding the Shares, etc.: The ratio obtained by multiplying the foreign controlling shareholder, etc.'s ratio of shareholding pertaining to the relevant other domestic corporation sequentially by the relevant other domestic corporation's ratio of shareholding pertaining to the capital contribution-related domestic corporation, by the capital contribution-related domestic corporation's ratio of shareholding pertaining to other capital contribution-related domestic corporations, and by the capital contribution-related domestic corporation's ratio of shareholding pertaining to the domestic corporation (where there are two or more linkages, the sum of the ratios calculated for each of them).
- (21) Where the domestic corporation and a foreign controlling shareholder, etc. related to the domestic corporation are in a relationship listed in paragraph (11), item (ii), when the same person prescribed in the same item is a resident or any other domestic corporation prescribed in Article 2, paragraph (1), item (i)-2 of the Act, the provisions of the preceding two paragraphs are to be

applied by deeming the same person to be a foreign controlling shareholder, etc. related to the domestic corporation.

(22) The amount calculated as specified by Cabinet Order as the amount of net assets prescribed in Article 66-5, paragraph (4), item (vii) of the Act is the amount that remains after deducting the amount listed in item (ii) from the amount listed in item (i) (where the remaining amount is less than the amount of stated capital, etc. prescribed in Article 2, item (xvi) of the Corporation Tax Act on the final day of the relevant business year of the domestic corporation (where the amount of stated capital, etc. is less than the amount of stated capital or capital contributions, the amount of stated capital or capital contributions; hereinafter referred to as the "Amount of Stated Capital, etc." in this paragraph and paragraph (24)), that calculated amount is the Amount of Stated Capital, etc.):

(i) the amount calculated by a reasonable method as the average balance of the book value of the total assets for the relevant business year of the domestic corporation (that book value means the amount that remains after deducting the amount reserved as a reserve fund by the appropriation of surplus and the amount reserved as a reserve for special depreciation pursuant to the provisions of Article 52-3 or Article 68-41 of the Act (limited to the amount reserved as a reserve fund by the appropriation of surplus) in lieu of reducing the book value of fixed assets by reckoning the amount into expenses for accounting purposes);

(ii) the amount calculated by a reasonable method as the average balance of the book value of the total liabilities for the relevant business year of the domestic corporation.

(23) The book value set forth in paragraph (5) and paragraph (18) and the preceding paragraph is to be based on the amount of assets or liabilities that the domestic corporation entered in its accounting books.

(24) Where any other domestic corporation which is a shareholder, etc. of the domestic corporation or a capital contribution-related domestic corporation (meaning a single domestic corporation or two or more domestic corporations which have a linkage with the domestic corporation and the relevant other domestic corporation through holding the Shares, etc.; the same applies in the following paragraph) intervenes between the domestic corporation and a foreign controlling shareholder, etc. related to the domestic corporation, when the amount obtained by multiplying the Amount of Stated Capital, etc. on the final day of the relevant business year of the domestic corporation by the ratio of shareholding pertaining to the domestic corporation of the relevant other domestic corporation or capital contribution-related domestic corporation exceeds the Amount of Stated Capital, etc. of the relevant other domestic corporation or capital contribution-related domestic corporation on the same

day (for a corporation falling under the category of a corporation subject to corporation tax on consolidated income prescribed in Article 2, item (xvi) of the Corporation Tax Act, when the amount exceeds the amount of consolidated individual stated capital, etc. prescribed in Article 39-113, paragraph (20)), the amount of equity capital pertaining to the domestic corporation is the amount that remains after deducting from the amount of equity capital, either of the smaller amount of the excess amount or the amount of liabilities owed by the relevant other domestic corporation or capital contribution-related domestic corporation to a foreign controlling shareholder, etc. and a fund provider, etc. related to the domestic corporation on the same day (referred to as the "deductible amount" in the following paragraph).

- (25) In the case prescribed in the preceding paragraph, when deeming a capital contribution-related domestic corporation set forth in the same paragraph to be the domestic corporation set forth in the same paragraph and if there is any deductible amount pertaining to the capital contribution-related domestic corporation, the amount of stated capital, etc. set forth in the same paragraph of the capital contribution-related domestic corporation is the amount that remains after deducting the deductible amount from the amount of stated capital, etc.; and the amount of liabilities owed by the capital contribution-related domestic corporation to a foreign controlling shareholder, etc. and a fund provider, etc. set forth in the same paragraph is the amount obtained by adding the amount of liabilities owed to the foreign controlling shareholder, etc. and fund provider, etc. and the deductible amount.
- (26) The amount calculated as specified by Cabinet Order as the interest on a domestic corporation's net assets prescribed in Article 66-5, paragraph (4), item (vi) of the Act and the amount calculated as specified by Cabinet Order as the amount of net assets prescribed in item (vii) of the same paragraph, where the domestic corporation is a corporation in the public interest, etc. prescribed in Article 2, item (vi) of the Corporation Tax Act or an association or foundation without juridical personality, is, notwithstanding the provisions of paragraph (19) to the preceding paragraph, the amount obtained by multiplying the amount of equity capital for the relevant business year of the domestic corporation by the ratio of the value of assets for the profit-making business prescribed in Article 2, item (xiii) of the Corporation Tax Act conducted by that domestic corporation out of the value of the total assets on the final day of the relevant business year.
- (27) The transaction specified by Cabinet Order prescribed in Article 66-5, paragraph (4), item (viii) of the Act is the relevant cash-secured bond lending transaction or bond transaction with a repurchase/resale agreement, where any of the bonds listed as follows are lent in a cash-secured bond lending transaction or transferred in a bond transaction with a repurchase/resale

agreement:

(i) bonds borrowed in a cash-secured bond lending transaction;

(ii) bonds purchased in a bond transaction with a repurchase/resale agreement.

(28) The domestic source income specified by Cabinet Order prescribed in Article 66-5, paragraph (4), item (ix) of the Act for a nonresident is the domestic source income of a nonresident set forth in the same item as specified in Article 164, paragraph (1), items (i) to (iii) of the Income Tax Act, in accordance with the category of the nonresident listed in those items (excluding the income for which income tax is reduced or exempted pursuant to the provisions of a tax convention (meaning a tax convention prescribed in Article 1-3, paragraph (1), item (ii); hereinafter the same applies in this paragraph)); and the domestic source income specified by Cabinet Order prescribed in Article 66-5, paragraph (4), item (ix) of the Act for a foreign corporation is the domestic source income of a foreign corporation set forth in Article 66-5, paragraph (4), item (ix) of the Act as specified in Article 164, paragraph (1), items (i) to (iii) of the Corporation Tax Act, in accordance with the category of the foreign corporation listed in those items (excluding the income for which corporation tax is reduced or exempted pursuant to the provisions of a tax convention).

(29) The provisions of paragraph (1), paragraphs (3) to (18), paragraph (22), paragraph (23), paragraph (27) and the preceding paragraph apply mutatis mutandis to the case of applying the provisions of paragraphs (1) to (4) and paragraphs (6) to (9) of Article 66-5 of the Act which are applied mutatis mutandis pursuant to paragraph (10) of the same Article. In this case, the terms listed in the middle column of the following table which are used in the provisions listed in the left-hand column of the same table are deemed to be replaced with the terms listed in the right-hand column of the same table.

Paragraph (1), item (i)	domestic corporation	foreign corporation
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	(those expenses are to be limited to	and which pertains to a business that the foreign corporation conducts in Japan (hereinafter referred to as a "domestic business" in this Article) (those expenses are to be limited, in the case where the foreign corporation is an association or foundation without juridical personality, which pertains to a profit-making business prescribed in Article 2, item (xiii) of the Corporation Tax Act (hereinafter referred to as a "profit-making business" in this Article) conducted by the foreign corporation and also limited to
	(limited to liabilities	which pertain to a domestic business (where the foreign corporation is an association or foundation without juridical personality, limited to liabilities pertaining to a profit-making business conducted by the foreign corporation and also limited to liabilities
Paragraph (1), item (ii), and paragraph(4) and paragraph (5)	domestic corporation	foreign corporation
Paragraph (6)	in paragraph (10)) which pertain to	in paragraph (10) and paragraph (22)) which pertain to a domestic business (where the foreign corporation is an association or foundation without juridical personality, limited to liabilities pertaining to a profit-making business conducted by the foreign corporation) and which pertain to
Paragraph (7) and paragraph (8)	domestic corporation	foreign corporation
Paragraph (10)	a domestic corporation which intends to	a foreign corporation which intends to

Paragraph (11), item (i) and item (ii)	domestic corporation	foreign corporation
	a foreign corporation	any other foreign corporation
Paragraph (11), item (iii)	domestic corporation	foreign corporation
	a nonresident (meaning a nonresident prescribed in Article 2, paragraph (1), item (i)-2 of the Act; the same applies in paragraph (28)) or a foreign corporation (hereinafter that nonresident or foreign corporation is referred to as a "nonresident, etc." in this item)	a nonresident (meaning a nonresident prescribed in Article 2, paragraph (1), item (i)-2 of the Act; the same applies in paragraph (28)) or any other foreign corporation
	the nonresident, etc.	that nonresident or the relevant other foreign corporation
	the foreign corporation's	the relevant other foreign corporation's
Paragraph (13) and paragraph (15)	domestic corporation	foreign corporation
Paragraph (22)	The amount calculated as specified by Cabinet Order as the amount of net assets prescribed in Article 66-5, paragraph (4), item (vii) of the Act	The amount calculated as specified by Cabinet Order as the interest on a domestic corporation's net assets held by a foreign controlling shareholder, etc. and the amount calculated as specified by Cabinet Order as the amount of net assets prescribed in item (vii) of the same paragraph
	domestic corporation	foreign corporation

	the amount of stated capital, etc. prescribed in Article 2, item (xvi) of the Corporation Tax Act on the final day of the relevant business year of the domestic corporation (where the amount of stated capital, etc. is less than the amount of stated capital or capital contributions, that amount of stated capital or capital contributions;	the amount obtained by multiplying the amount of stated capital, etc. prescribed in Article 2, item (xvi) of the Corporation Tax Act on the final day of the relevant business year of the domestic corporation by the ratio of the book value of the assets pertaining to a domestic business (where the foreign corporation is an association or foundation without juridical personality, limited to assets pertaining to a profit-making business conducted by that foreign corporation) out of the book value of the total assets on the same day (
	the total assets	the total assets which pertain to a domestic business (where the foreign corporation is an association or foundation without juridical personality, limited to assets pertaining to a profit-making business conducted by that foreign corporation)
	the total liabilities	the total liabilities which pertain to a domestic business (where the foreign corporation is an association or foundation without juridical personality, limited to liabilities pertaining to a profit-making business conducted by that foreign corporation)
Paragraph (23)	domestic corporation	foreign corporation

(30) With respect to the application of the provisions of Article 22 of the Order for Enforcement of the Corporation Tax Act in the case where the provisions of Article 66-5, paragraph (1) of the Act apply, the term "the sum of the amount of interest on liabilities prescribed in the same paragraph to be paid for the relevant business year" in Article 22, paragraph (1) of the same Order is deemed to be replaced with "the sum of the amount of interest on liabilities prescribed in the same paragraph to be paid for the relevant business year (where there is any amount that is not included in deductible expenses pursuant to the provisions of Article 66-5, paragraph (1) (Special Provisions for



Taxation on Interest on Liabilities Payable to Foreign Controlling Shareholders) of the Act on Special Measures Concerning Taxation, the sum is the amount that remains after deducting the amount); the term "the sum of the amount of interest on liabilities that a domestic corporation set forth in the same paragraph pays for the business year set forth in the same paragraph" in paragraph (2) of the same Article is deemed to be replaced with "the sum of the amount of interest on liabilities that a domestic corporation set forth in the same paragraph pays for the business year set forth in the same paragraph (where there is any amount that is not included in deductible expenses pursuant to the provisions of Article 66-5, paragraph (1) (Special Provisions for Taxation on Interest on Liabilities Payable to Foreign Controlling Shareholders) of the Act on Special Measures Concerning Taxation, the sum is the amount that remains after deducting the amount); the term "the amount listed in item (i)" in paragraph (1) and paragraph (2) of the same Article is deemed to be replaced with "the amount listed in item (i) (where there is any amount that is not included in deductible expenses pursuant to the provisions of Article 66-5, paragraph (1) of the Act on Special Measures Concerning Taxation, that amount is the amount that remains after deducting the amount equivalent to the amount exceeding the average balance of liabilities prescribed in Article 39-13, paragraph (1), item (i) (Calculation of the Amount of Interest on Liabilities Payable to Foreign Controlling Shareholders to Be Excluded from Deductible Expenses) of the Order for Enforcement of the Act on Special Measures Concerning Taxation (Cabinet Order No. 43 of 1957) (including the cases where it is applied following the deemed replacement of terms pursuant to the provisions of paragraph (9) of the same Article) (in the case where the provisions of paragraph (1) of the same Article is applied following the deemed replacement of terms pursuant to the provisions of paragraph (2) of the same Article, after deducting the amount equivalent to the amount exceeding the average balance of the total liabilities prescribed in the same item which is applied following the deemed replacement of terms pursuant to the provisions of paragraph (2) of the same Article))"; the term "(hereinafter referred to as the 'sum of' in paragraph (3) of the same Article is deemed to be replaced with "(where there is any amount that is not included in deductible expenses pursuant to the provisions of Article 66-5, paragraph (1) of the Act on Special Measures Concerning Taxation, the amount that remains after deducting the amount; hereinafter referred to as the 'sum of"; and the term "paragraph (4), item (i) of the same Article" in the same paragraph is deemed to be replaced with "Article 23, paragraph (4), item (i) of the Act".

**Section 8-4 Special Provisions for Taxation on Income of Specified  
Foreign Subsidiary Companies of Domestic Corporations**

(Scope of Specified Foreign Subsidiary Companies)

Article 39-14 (1) The affiliated foreign company specified by Cabinet Order prescribed in Article 66-6, paragraph (1) of the Act is any of the following:

- (i) an affiliated foreign company (meaning an affiliated foreign company prescribed in Article 66-6, paragraph (2), item (i) of the Act; hereinafter the same applies in this Article) that has its head office or principal office in a state or territory where there are no taxes imposed on corporate income;
- (ii) an affiliated foreign company whose tax imposed on its income for the relevant business year is 25 percent or less of the income.

(2) Whether or not an affiliated foreign company falls under the category of an affiliated foreign company set forth in item (ii) of the preceding paragraph is to be determined as specified as follows:

- (i) the amount of income set forth in item (ii) of the preceding paragraph is the amount obtained by adding the amount of income calculated pursuant to the provisions of the laws and regulations concerning foreign corporation taxes (meaning foreign corporation taxes prescribed in Article 69, paragraph (1) of the Corporation Tax Act; hereinafter the same applies in this Section) of the state or territory where the head office or principal office of the affiliated foreign company is located (hereinafter referred to as the "State of the Head Office" in this Section) (where there are two or more laws and regulations concerning the foreign corporation taxes, pursuant to the provisions of the principal ones; hereinafter referred to as the "Laws and Regulations of the State of the Head Office" in this paragraph) with regard to the affiliated foreign company's amount of income in its settlement of accounts for the relevant business year and the sum of the amounts listed in (a) to (e) pertaining to the calculated amount of income and then deducting therefrom the amount listed in (f) pertaining to the calculated amount of income:

- (a) the amount of income which is not to be included in the foreign corporation tax base under the Laws and Regulations of the State of the Head Office (excluding the following amounts):
  1. the amount listed in Article 23, paragraph (1), item (i) of the Corporation Tax Act to be received from a corporation located in the state of the head office (including the amount of profit reserve to be reduced by reason of the delivery of money or other assets on any of the grounds listed in the items of Article 254, paragraph (1) of the same Act; hereinafter referred to as the "Amount of a Dividend, etc." in this item and the following Article);
  2. the Amount of a Dividend, etc. received from a corporation located in a state or territory other than the state of the head office, which is not to be included in the foreign corporation tax base on condition that the

ratio of the shares, etc. (meaning the shares or capital contributions; hereinafter the same applies in this Section) held by the affiliated foreign company out of the total number or total amount of the corporation's issued shares or capital contributions (excluding its own shares held by the corporation) (hereinafter referred to as the "Issued Shares, etc." in this Section) is not less than the ratio specified by the Laws and Regulations of the State of the Head Office);

- (b) the Amount of a Dividend, etc. that the affiliated foreign company pays and which is included in deductible expenses;
- (c) the amount of foreign corporation tax that the affiliated foreign company pays and which is included in deductible expenses;
- (d) the amount of reserve belonging to the reserve for casualty set forth in Article 57-5, paragraph (1) or Article 57-6, paragraph (1) of the Act (hereinafter referred to as the "Insurance Reserve" in this paragraph and paragraph (2) of the following Article) that the affiliated foreign company has reserved and which is included in deductible expenses and which is equivalent to the amount to be excluded from deductible expenses when the provisions of Article 57-5 or Article 57-6 of the Act are applied;
- (e) where the amount that has been included in gross profits regarding the Insurance Reserve reserved by the affiliated foreign company (limited to the Insurance Reserve that can be reserved when the provisions of Article 57-5 or Article 57-6 of the Act are applied) does not reach the amount to be included in gross profits when these provisions are applied, the amount of the shortfall;
- (f) the amount of foreign corporation tax that is refunded to the affiliated foreign company and which is included in gross profits;
- (ii) the amount of tax set forth in item (ii) of the preceding paragraph is the sum of the amounts listed as follows:
  - (a) the amount of foreign corporation tax to be imposed on the amount of the affiliated foreign company's income in its settlement of accounts for the relevant business year in the state of the head office or in a state or territory other than the state of the head office (including the amount to be deducted from the foreign corporation tax of the state of the head office by deeming that the affiliated foreign company has paid the amount under the Laws and Regulations of the State of the Head Office and excluding the amount of foreign corporation tax to be imposed on the amount listed in (a), 2. of the preceding item);
  - (b) the amount of foreign corporation tax reduced or exempted for the affiliated foreign company for the relevant business year in the state of the head office, which is deemed to have been paid by the affiliated foreign company pursuant to the provisions of a tax convention prescribed in

- Article 1-3, paragraph (1), item (ii);
- (iii) where the foreign corporation tax rates of the state of the head office increase in accordance with the amount of income, the amount of foreign corporation tax set forth in (a) of the preceding item may be the amount calculated based on the highest rates out of the tax rates;
- (iv) where the amount of income set forth in item (ii) of the preceding paragraph proves to be a loss, the amount of foreign corporation tax is to be determined based on the foreign corporation tax rate to be applied in the state of the head office to any income that arises from revenue pertaining to the affiliated foreign company's principal business (in the case where the revenue falls under what is listed in 1. or 2. of item (i), (a), revenue other than the revenue).
- (3) A nonresident who has a special relationship specified by Cabinet Order with a resident or domestic corporation prescribed in Article 66-6, paragraph (2), item (i) of the Act is a nonresident prescribed in Article 2, paragraph (1), item (i)-2 of the Act listed as follows:
- (i) a relative of the resident prescribed in Article 2, paragraph (1), item (i)-2 of the Act (hereinafter referred to as a "Resident" in this paragraph and Article 39-16, paragraph (6));
- (ii) a person in a relationship with the Resident where a marital relationship is de facto, though a marriage has not been registered;
- (iii) an employee of the Resident;
- (iv) a person other than those listed in the preceding three items who maintains their living by receiving money or any other assets from the Resident;
- (v) a relative of any of the persons listed in the preceding three items who depends on the person for their livelihood;
- (vi) an officer of the domestic corporation (meaning an officer prescribed in Article 2, item (xv) of the Corporation Tax Act; hereinafter the same applies through to Article 39-16) and a person listed in the items of Article 72-3 of the Order for Enforcement of the Corporation Tax Act who is related to the officer.

(Calculation of Amount of Eligible Income of Specified Foreign Subsidiary Companies)

Article 39-15 (1) The amount of eligible income calculated in accordance with the standards specified by Cabinet Order prescribed in Article 66-6, paragraph (2), item (ii) of the Act is the amount that remains after deducting the amounts listed in item (iii) and item (iv) pertaining to the amount of income of a specified foreign subsidiary company, etc. prescribed in paragraph (1) of the same Article (hereinafter referred to as a "Specified Foreign Subsidiary

Company, etc." in this Article and paragraph (1) of the following Article) in its settlement of accounts for the relevant business year from the sum of the amounts listed in item (i) and item (ii) pertaining to the income (where the amount listed in item (i) pertaining to the income is a loss, the amount of eligible income is the amount that remains after deducting the sum of the amount of loss and the amounts listed in item (iii) and item (iv) pertaining to the amount of income from the amount listed in item (ii) pertaining to the amount of income):

- (i) the amount of income or amount of a loss calculated, with regard to the amount of income of a Specified Foreign Subsidiary Company, etc. in its settlement of accounts for the relevant business year, in accordance with the provisions of Part II, Chapter 1, Section 1, Subsection 2 to Subsection 9 (excluding Article 23, Article 23-2, Article 26, paragraphs (1) to (5), Articles 38 to 41, Article 55, paragraph (3), Article 57, Article 58, Article 59, and Articles 61-11 to 61-13 of the Corporation Tax Act), and Subsection 11 of the same Act, and the provisions of Article 43, Article 45-2, Article 52-2, Article 57-5, Article 57-6, Article 57-8, Article 57-10, Article 61-4, Articles 65-7 to 65-9 (limited to the part pertaining to item (xix) of the table in Article 65-7, paragraph (1) of the Act), Article 66-4, paragraph (3), Article 67-12 and Article 67-13 of the Act (hereinafter referred to as the "Provisions of the Laws and Regulations of Japan" in this item) (where the provisions of paragraph 66-4, paragraph (1) or Article 68-88, paragraph (1) of the Act is applied to a transaction with a domestic corporation listed in the items of Article 66-6, paragraph (1) of the Act related to the Specified Foreign Subsidiary Company, etc., the amount of income or amount of a loss calculated in accordance with the Provisions of the Laws and Regulations of Japan by deeming that the transaction was carried out at the arm's length price prescribed in these provisions);
- (ii) the amount of corporate income tax payable in the relevant business year (meaning taxes to be imposed based on the amount of the corporation's income in the state of the head office or in a state or territory other than the state of the head office or by local entities in those states or territories including the state of the head office (including taxes listed in the items of Article 141, paragraph (2) of the Order for Enforcement of the Corporation Tax Act to be imposed in those states or territories or by local entities in those states or territories) and taxes equivalent to incidental taxes to be imposed incidentally as prescribed in Article 2, item (xlv) of the Corporation Tax Act (excluding interest tax) and other taxes similar to the tax equivalent to the incidental taxes; hereinafter the same applies in this Article);
- (iii) the amount of corporate income tax to be refunded in the relevant business year;

- (iv) the Amount of a Dividend, etc. to be received in the relevant business year from a subsidiary company (meaning another corporation (excluding any of the corporations listed as follows) in the case where the percentage of the number or the amount of shares, etc. held by the Specified Foreign Subsidiary Company, etc. in the Issued Shares, etc. of the relevant other corporation or the percentage of the number or the amount of voting shares, etc. held by the Specified Foreign Subsidiary Company, etc. in the Issued Shares, etc. of the relevant other corporation is not less than 25 percent, and the shares have been held for six months or more until the day on which the obligation to pay the Amount of a Dividend, etc. that the Specified Foreign Subsidiary Company, etc. receives from the relevant other corporation is determined (or the day preceding that day in the case where the amount of dividend, etc. is the Amount of a Dividend, etc. specified by Cabinet Order pertaining to the grounds prescribed in Article 24, paragraph (1) of the Corporation Tax Act) (in the case where the relevant other corporation is a corporation established within six months until the day on which the obligation is determined, during the period from the date of the establishment until the day on which the obligation is determined)):
- (a) the special purpose company prescribed in Article 67-14, paragraph (1) of the Act;
  - (b) the investment corporation prescribed in Article 67-15, paragraph (2) of the Act;
  - (c) the trust corporation prescribed in Article 68-3-2, paragraph (1) or paragraph (9) of the Act for a special purpose trust prescribed in paragraph (1) of the same Article;
  - (d) the trust corporation prescribed in Article 68-3-3, paragraph (1) or paragraph (9) of the Act for a special investment trust prescribed in paragraph (1) of the same Article (limited to those that satisfy the requirements listed in item (i), (b) and (c) of the same paragraph).
- (2) Notwithstanding the provisions of the preceding paragraph, a domestic corporation listed in the items of Article 66-6, paragraph (1) of the Act may deem that the amount obtained by adding the amount of income calculated, with regard to the amount of income of a Specified Foreign Subsidiary Company, etc. in its settlement of accounts for the relevant business year, pursuant to the provisions of the laws and regulations concerning corporate income taxes of the state of the head office of the Specified Foreign Subsidiary Company, etc. (where there are two or more laws and regulations concerning the corporate income taxes, pursuant to the provisions of the principal ones; hereinafter referred to as the "Laws and Regulations of the State of the Head Office" in this paragraph), (where the provisions of Article 66-4, paragraph (1) or Article 68-88, paragraph (1) of the Act is applied to a transaction between

the Specified Foreign Subsidiary Company, etc. and the domestic corporation, the amount of income calculated pursuant to the provisions of the Laws and Regulations of the State of the Head Office by deeming that the transaction was carried out at the arm's length price prescribed in these provisions), and the sum of the amount listed in items (i) to (xiii) pertaining to the calculated amount of income and then deducting therefrom the amount listed in item (xiii) and item (xiv) pertaining to the calculated amount of income (where the amount calculated pursuant to the provisions of the Laws and Regulations of the State of the Head Office proves to be a loss, that calculated amount is the amount that remains after deducting the sum of the amount of loss and the amount listed in items (xiv) to (xvi) pertaining to the calculated amount from the sum of the amounts listed in items (i) to (xiii) pertaining to the calculated amount) may be the amount calculated in accordance with the standards specified by Cabinet Order prescribed in Article 66-6, paragraph (2), item (ii) of the Act:

- (i) the amount of income which is not included in the corporate income tax base for the relevant business year under the Laws and Regulations of the State of the Head Office;
- (ii) the Amount of a Dividend, etc. that the Specified Foreign Subsidiary Company, etc. pays and which is included in deductible expenses for the relevant business year;
- (iii) the excess amount that exceeds the amount equivalent to that to be included in deductible expenses, when the provisions of Article 31 of the Corporation Tax Act are to be applied, out of the amount included in deductible expenses for the relevant business year as the depreciation allowance for the depreciable assets that the Specified Foreign Subsidiary Company, etc. holds (excluding goodwill obtained on or before March 31, 1998) (the inclusive amount is limited to the amount calculated, with the acquisition costs of the depreciable assets (where there is any amount of past depreciation already included in deductible expenses for the relevant business year, the amount after deducting the amount) as the limit of the amount to be included in deductible expenses for the relevant business year);
- (iv) the amount equivalent to that included in deductible expenses for the relevant business year due to changes in the valuation of the assets that the Specified Foreign Subsidiary Company, etc. holds, which is not to be included in deductible expenses when the provisions of Article 33 of the Corporation Tax Act are to be applied;
- (v) the amount equivalent to the amount of remuneration to be paid to the officers of the Specified Foreign Subsidiary Company, etc. included in deductible expenses for the relevant business year, which is not to be included in deductible expenses when the provisions of Article 34 or Article

- 35 of the Corporation Tax Act are to be applied;
- (vi) the amount equivalent to the amount of remuneration to be paid to employees of the Specified Foreign Subsidiary Company, etc. included in deductible expenses for the relevant business year, which is not to be included in deductible expenses when the provisions of Article 36 of the Corporation Tax Act are to be applied;
  - (vii) the amount equivalent to the amount of a contribution that the Specified Foreign Subsidiary Company, etc. makes (excluding a contribution to the state of the head office or local entities in the state which is equivalent to that prescribed in Article 37, paragraph (3), item (i) of the Corporation Tax Act) and which is included in deductible expenses for the relevant business year, which is not to be included in deductible expenses when the provisions of paragraph (1) of the same Article and Article 66-4, paragraph (3) of the Act are to be applicable;
  - (viii) the amount of corporate income tax that the Specified Foreign Subsidiary Company, etc. pays and which is included in deductible expenses for the relevant business year;
  - (ix) the amount of a loss incurred in business years preceding the relevant business year, pursuant to the provisions of the Laws and Regulations of the State of the Head Office that are equivalent to those of Article 57, Article 58 or Article 59 of the Corporation Tax Act, which is included in deductible expenses for the relevant business year;
  - (x) the amount equivalent to the amount of Insurance Reserve that the Specified Foreign Subsidiary Company, etc. has reserved and which is included in deductible expenses for the relevant business year, which is not to be included in deductible expenses when the provisions of Article 57-5 or Article 57-6 of the Act are to be applied;
  - (xi) where the amount that has been included in gross profits for the relevant business year regarding the Insurance Reserve reserved by the Specified Foreign Subsidiary Company, etc. (limited to the Insurance Reserve that can be reserved when these provisions are to be applied) is less than the amount to be included in gross profits when the provisions of Article 57-5 or Article 57-6 of the Act are to be applied, the amount of the shortfall;
  - (xii) the amount equivalent to the amount of expenses equivalent to entertainment and social expenses prescribed in Article 61-4, paragraph (1) of the Act that the Specified Foreign Subsidiary Company, etc. pays and which is included in deductible expenses for the relevant business year, which is not to be included in deductible expenses when the provisions of the same Article are to be applied;
  - (xiii) the amount equivalent to the amount of a loss of the Specified Foreign Subsidiary Company, etc. (meaning the amount of a loss related to a



- partnership, etc. prescribed in Article 67-12, paragraph (1) of the Act or the amount of a loss prescribed in Article 67-13, paragraph (1) of the Act incurred due to a partnership business prescribed in the same paragraph), which is not to be included in deductible expenses when the provisions of Article 67-12, paragraph (1) or Article 67-13, paragraph (1) of the Act are to be applied;
- (xiv) the amount equivalent to the amount which is to be included in deductible expenses when the provisions of Article 67-12, paragraph (2) or Article 67-13, paragraph (2) of the Act are to be applied;
  - (xv) the amount of corporate income tax to be refunded to the Specified Foreign Subsidiary Company, etc. which is included in gross profits for the relevant business year;
  - (xvi) the amount equivalent to that included in gross profits for the relevant business year due to changes in the valuation of the assets that the Specified Foreign Subsidiary Company, etc. holds, which is not to be included in gross profits when the provisions of Article 25 of the Corporation Tax Act are to be applied;
  - (xvii) the amount listed in item (iv) of the preceding paragraph.
- (3) Where there is any amount of deductible dividend, etc. (meaning the amount equivalent to the amount specified respectively in the following items for the category of cases listed in the relevant items; hereinafter the same applies in this paragraph) for the relevant business year of a Specified Foreign Subsidiary Company, etc. related to a domestic corporation listed in the items of Article 66-6, paragraph (1) of the Act, the amount calculated in accordance with the standards specified by Cabinet Order prescribed in Article 66-6, paragraph (2), item (ii) of the Act is the amount that remains after deducting the amount of deductible dividend, etc. from the amount calculated pursuant to these provisions, notwithstanding the provisions of paragraph (1) or the preceding paragraph:
- (i) where the Amount of a Dividend, etc. that the Specified Foreign Subsidiary Company, etc. receives from any Other Specified Foreign Subsidiary Company, etc. related to the domestic corporation (including a Specified Foreign Subsidiary Company, etc. prescribed in Article 68-90, paragraph (1) of the Act and excluding those falling under the category of subsidiary companies prescribed in paragraph (1), item (iv); hereinafter referred to as the "Other Specified Foreign Subsidiary Company, etc." in this paragraph) in the relevant business year does not exceed the amount of a dividend payable corresponding to the capital contributions of the Specified Foreign Subsidiary Company, etc. out of the total amount of a dividend payable by the relevant Other Specified Foreign Subsidiary Company, etc. in the business year containing the base date for paying the dividend, etc. (hereinafter referred to

as the "Base Business Year" in this paragraph) and the Base Business Year is the business year during which the taxable income prescribed in Article 66-6, paragraph (1) of the Act (hereinafter referred to as the "Taxable Income" in this Section) or individually Taxable Income prescribed in Article 68-90, paragraph (1) of the Act (hereinafter referred to as the "Individually Taxable Income" in the following item) arises: The amount of the dividend, etc.;

(ii) where the Amount of a Dividend, etc. that the Specified Foreign Subsidiary Company, etc. receives from any Other Specified Foreign Subsidiary Company, etc. related to the domestic corporation in the relevant business year exceeds the amount of a dividend payable corresponding to the capital contributions for the Base Business Year pertaining to the Amount of a Dividend, etc.: Where the amount of a dividend payable corresponding to the capital contributions for the relevant business year preceding the Base Business Year of the relevant Other Specified Foreign Subsidiary Company, etc. is to be appropriated to the Amount of a Dividend, etc. in reverse chronological order and the Amount of a Dividend, etc. has been categorized for the relevant business year in accordance with the amount of dividend payable corresponding to the capital contributions for the relevant business year, the sum of the Amount of a Dividend, etc. to be appropriated with the amount of a dividend payable corresponding to the capital contributions for the business year during which the Taxable Income or Individually Taxable Income arises.

(4) In the preceding paragraph and this paragraph, the meanings of the terms set forth in the following items are as prescribed respectively in those items:

(i) amount of dividend payable: The amount that remains after deducting the sum of the amounts listed in (e) and (f) pertaining to eligible income (meaning eligible income prescribed in Article 66-6, paragraph (2), item (ii) of the Act; hereinafter the same applies in this item) of a specialized foreign subsidiary company, etc. for the relevant business year, from the amount calculated by adding the eligible income to the sum of the amounts listed in (a) to (d):

(a) the amount listed in paragraph (1) (limited to the part concerning item (iv)) or paragraph (2) (limited to the part concerning item (xvii)) to be deducted pursuant to the provisions of paragraph (1);

(b) the amount of a deductible dividend, etc. prescribed in the preceding paragraph to be deducted pursuant to the provisions of the same paragraph;

(c) in the case where the provisions of Article 66-4, paragraph (1) or Article 68-88, paragraph (1) of the Act are applied to a transaction with a domestic corporation listed in the items of Article 66-6, paragraph (1) of the Act

- pertaining to the Specified Foreign Subsidiary Company, etc., and the amount of income to be reduced pursuant to the provisions of paragraph (1) or paragraph (2) contains any amount that is not paid to the domestic corporation, the amount that is not paid;
- (d) the amount that accounts for ten percent of the amount of expenses specified by Cabinet Order prescribed in Article 66-6, paragraph (2), item (ii) to be deducted pursuant to the provisions of the same item in which the terms and phrases are replaced pursuant to the provisions of paragraph (3) of the same Article;
- (e) the amount payable due to the appropriation of surplus for the relevant business year (excluding the amount of corporate income tax and the Amount of a Dividend, etc.);
- (f) the amount paid as the expenses for the relevant business year (excluding the amount of corporate income tax and the Amount of a Dividend, etc.) which was included in the amount of eligible income for the relevant business year, because the amount was not included in deductible expenses for calculating the amount of income pursuant to the provisions of paragraph (1) or paragraph (2) or was included in the amount of income pursuant to the provisions of the same paragraph;
- (ii) the amount of a dividend payable corresponding to the capital contributions: The amount obtained by multiplying the amount of a dividend payable by a Specified Foreign Subsidiary Company, etc. by the ratio of the number or the amount of the shares, etc. of the Specified Foreign Subsidiary Company, etc. that any other Specified Foreign Subsidiary Company, etc. (hereinafter referred to as the "Other Specified Foreign Subsidiary Company, etc." in this item) holds out of the total Issued Shares, etc. of the Specified Foreign Subsidiary Company, etc. (where the Specified Foreign Subsidiary Company, etc. has issued the shares, etc. in which claims prescribed in Article 66-6, paragraph (1) of the Act (hereinafter referred to as the "Claims" through to Article 39-19) with different contents are vested, or the shares, etc. in which Claims with different contents are deemed to be substantially vested (referred to as the "shares, etc. in which different Claims are vested" in paragraph (2) of the following Article and paragraph (1) of Article 39-19, paragraph (1)), the ratio of the amount of a dividend of surplus, etc. that the relevant Other Specified Foreign Subsidiary Company, etc. can receive based on the Claims out of the total Amount of a Dividend, etc.).
- (5) The amount obtained as a result of an adjustment for the amount of loss and base income prescribed in Article 66-6, paragraph (2), item (ii) of the Act is the amount that remains after deducting, from the base income amount, prescribed in the same item, of a Specified Foreign Subsidiary Company, etc. for the relevant business year (referred to as the "base income amount" in paragraph

(7) and paragraph (8)), the sum of the amounts listed as follows (where the provisions of paragraph (3) of the same Article are applied, the amount obtained by adding the amount that accounts for ten percent of the amount of expenses specified by Cabinet Order prescribed in Article 66-6, paragraph (2), item (ii) of the Act in which the terms and phrases are replaced pursuant to the provisions of paragraph (3) of the same Article):

(i) the amount equivalent to the sum of the loss incurred in business years that started within seven years prior to the first day of the relevant business year of the Specified Foreign Subsidiary Company, etc. (excluding the business years that started before April 1, 1978 and the business years during which the company did not fall under the category of specified foreign subsidiary companies, etc. (including specified foreign subsidiary companies, etc. prescribed in Article 40-4, paragraph (1) or Article 68-90, paragraph (1) of the Act)) (that loss excludes the amount deducted in the business years preceding the relevant business year pursuant to the provisions of this paragraph and Article 39-115, paragraph (5));

(ii) the amount of corporate income tax that the Specified Foreign Subsidiary Company, etc. is to pay in the relevant business year (where there is any amount of corporate income tax to be refunded in the relevant business year, the amount that remains after deducting the amount of corporate income tax to be refunded).

(6) A loss prescribed in item (i) of the preceding paragraph is a loss calculated where the provisions of paragraph (1), paragraph (2) or paragraph (3) are applied to the amount of income of a Specified Foreign Subsidiary Company, etc. in its settlement of accounts for the relevant business year.

(7) When making a calculation set forth in paragraph (1), item (i), if there is any amount to be included in deductible expenses in the relevant business year, pursuant to the provisions of Article 33 and Articles 42 to 53 of the Corporation Tax Act, and the provisions of Article 43, Article 45-2, Article 52-2, Article 57-5, Article 57-6, Article 57-8, Articles 65-7 to 65-9 (limited to the part pertaining to item (xix) of the table in Article 65-7, paragraph (1) of the Act), Article 67-12, paragraph (2) and Article 67-13, paragraph (2) of the Act, whose provisions are to be applicable under the provisions of the same item, the amount is included in deductible expenses for calculating the base income amount for the relevant business year, only when detailed statements concerning the inclusion of the amount in deductible expenses are attached to a final return form set forth in Article 66-6, paragraph (5) of the Act (referred to as a "final return form" in the following paragraph) for the relevant business year; provided, however, that this does not apply when the district director of the tax office finds that there was any unavoidable reason for the failure to attach detailed statements and the detailed statements have been submitted.

- (8) When calculating the base income amount pursuant to the provisions of paragraph (1) (limited to the part concerning item (iv)) or paragraph (2) (limited to the part concerning item (xvii)), if there is any amount to be deducted for the relevant business year pursuant to these provisions, the amount is deducted in the calculation of the base income amount of the business year only where a detailed statement concerning the calculation of the amount is attached to the final return form pertaining to the business year; provided, however, that this does not apply when the district director of the tax office finds any unavoidable reason for the failure to attach the detailed statement, and the detailed statement is submitted.
- (9) Where a domestic corporation, which was subject to the provisions of paragraph (1) for calculating the amount of income of the Specified Foreign Subsidiary Company, etc. in its settlement of accounts for the relevant business year, seeks the application of paragraph (2) for calculating the amount of income of the Specified Foreign Subsidiary Company, etc. in its settlement of accounts for the relevant business year in business years following the one to which the provisions of paragraph (1) have been applied; or where a domestic corporation, which was subject to the provisions of paragraph (2) for calculating the amount of income of the Specified Foreign Subsidiary Company, etc. in its settlement of accounts for the relevant business year, seeks the application of paragraph (1) for calculating the amount of income of the Specified Foreign Subsidiary Company, etc. in its settlement of accounts for the relevant business year in business years following the one to which the provisions of paragraph (2) have been applied, it must receive approval from the competent district director having jurisdiction over its place for tax payment, in advance.

(Calculation of the Amount of Taxable Income of Specified Foreign Subsidiary Companies Related to Domestic Corporations)

- Article 39-16 (1) The amount calculated as specified by Cabinet Order prescribed in Article 66-6, paragraph (1) of the Act is the amount obtained by multiplying the amount of eligible income prescribed in the same paragraph for the relevant business year of a specified foreign subsidiary company, etc. pertaining to a domestic corporation listed in the items of the same paragraph by the ratio of the shares, etc. for considering the claims held by the domestic corporation out of the total Issued Shares, etc. of the specified foreign subsidiary company, etc. at the end of the relevant business year of the specified foreign subsidiary company, etc.
- (2) In the preceding paragraph and this paragraph, the meanings of the terms set forth in the following items are as prescribed respectively in those items:
- (i) shares, etc. for considering the claims held: The number or the amount

adding together the number or the amount of the shares, etc. of a foreign corporation directly held by a domestic corporation (where the foreign corporation has issued the shares, etc. in which different claims are vested, the number or the amount obtained by multiplying the Issued Shares, etc. of the foreign corporation by the ratio of the amount of a dividend of surplus, dividend of profit, or distribution of surplus as prescribed in Article 23, paragraph (1), item (i) of the Corporation Tax Act (hereinafter referred to as a "Dividend of Surplus, etc." in this Article and Article 39-19, paragraph (1)) that the domestic corporation can receive based on the claims out of the total amount) and the shares, etc. for considering the claims indirectly held;

(ii) shares, etc. for considering the claims indirectly held: The number or the amount of the shares, etc. obtained by multiplying the Issued Shares, etc. of a foreign corporation by the ratio specified respectively in the following items for the category of cases listed in the relevant items (where falling under both of the following cases, the sum of the ratios specified respectively as follows):

(a) where a domestic corporation holds the whole or a part of the Issued Shares, etc. of other foreign corporations which are shareholders, etc. (meaning shareholders, etc. prescribed in Article 2, item (xiv) of the Corporation Tax Act; hereinafter the same applies in this Article) of the foreign corporation (hereinafter the relevant other foreign corporations are simply referred to as "Other Foreign Corporations" in (a)): The ratio obtained by multiplying the domestic corporation's ratio of shareholding (meaning the ratio of the number or the amount of the shares, etc. held by the shareholders, etc. out of the total Issued Shares, etc. of the corporation issuing the shares, etc. (where the issuing corporation has issued the shares, etc. in which different claims are vested, the ratio of the amount of a Dividend of Surplus, etc. that the shareholder, etc. can receive based on the claims out of the total amount); hereinafter the same applies in this item) pertaining to the relevant Other Foreign Corporations by the relevant Other Foreign Corporations' ratio of shareholding pertaining to the foreign corporation (where there are two or more Other Foreign Corporations, the sum of the ratios calculated for each of them);

(b) where a single foreign corporation or two or more foreign corporations intervene between the foreign corporation and any other foreign corporation (limited to any other foreign corporation, the whole or a part of whose Issued Shares, etc. are held by a domestic corporation; hereinafter referred to as the "Other Foreign Corporation" in this item) (hereinafter that intervening foreign corporation is referred to as a "Capital Contribution-Related Foreign Corporation" in this item) and the domestic corporation, the relevant Other Foreign Corporation, Capital Contribution-

Related Foreign Corporation and the foreign corporation have a linkage through holding the shares, etc.: The ratio obtained by multiplying the domestic corporation's ratio of shareholding pertaining to the relevant Other Foreign Corporation sequentially by the relevant Other Foreign Corporation's ratio of shareholding pertaining to the Capital Contribution-Related Foreign Corporation, by the capital contribution-related foreign corporation's ratio of shareholding pertaining to other Capital Contribution-Related Foreign Corporations, and by the capital contribution-related foreign corporation's ratio of shareholding pertaining to the foreign corporation (where there are two or more linkages, the sum of the ratios calculated for each of them).

- (3) The number of the shares or the amount of capital contributions of a foreign corporation specified by Cabinet Order as those held indirectly as prescribed in Article 66-6, paragraph (2), item (iii) of the Act is the number or the amount of the shares, etc. obtained by multiplying the Issued Shares, etc. of a foreign corporation by the ratio specified respectively in the following items for the category of cases listed in the relevant items (where falling under both of the following cases, the sum of the ratios specified respectively as follows):
- (i) Where an individual or domestic corporation holds the whole or a part of the Issued Shares, etc. of other foreign corporations which are shareholders, etc. of the foreign corporation (hereinafter referred to as "Other Foreign Corporations" in this item): The ratio obtained by multiplying the ratio of shareholding (meaning the ratio of the number or the amount of the shares, etc. held by the shareholders, etc. out of the total Issued Shares, etc. of the corporation issuing the shares, etc.; hereinafter the same applies in this paragraph) of the individual or domestic corporation pertaining to the relevant Other Foreign Corporations by the relevant Other Foreign Corporations' ratio of shareholding pertaining to the foreign corporation (where there are two or more Other Foreign Corporations, the sum of the ratios calculated for each of them)
  - (ii) Where a single foreign corporation or two or more foreign corporations intervene between the foreign corporation and any other foreign corporation (limited to any other foreign corporation, the whole or a part of whose Issued Shares, etc. are held by an individual or domestic corporation; hereinafter referred to as the "Other Foreign Corporation" in this paragraph) (hereinafter that intervening foreign corporation is referred to as a "Capital Contribution-Related Foreign Corporation" in this paragraph) and the individual or domestic corporation, the relevant Other Foreign Corporation, Capital Contribution-Related Foreign Corporation and the foreign corporation have a linkage through holding the shares, etc.: The ratio obtained by multiplying the ratio of the shareholding of the individual or

domestic corporation pertaining to the relevant Other Foreign Corporation sequentially by the relevant Other Foreign Corporation's ratio of shareholding pertaining to the Capital Contribution-Related Foreign Corporation(s), by the capital contribution-related foreign corporation's ratio of shareholding pertaining to other Capital Contribution-Related Foreign Corporations, and by the capital contribution-related foreign corporation's ratio of shareholding pertaining to the foreign corporation (where there are two or more linkages, the sum of the ratios calculated for each of them).

(4) The number of voting rights of a foreign corporation specified by Cabinet Order as being held indirectly as prescribed in Article 66-6, paragraph (2), item (iv) of the Act is the number of voting rights obtained by multiplying the total number of voting rights (meaning the voting rights prescribed in Article 66-6, paragraph (1), item (i), (a) of the Act; hereinafter the same applies in this paragraph) of a foreign corporation by the ratio specified respectively in the following items for the category of cases listed in the relevant items (where falling under both of the following cases, the sum of the ratios specified respectively as follows):

(i) Where an individual or domestic corporation holds the whole or a part of the voting rights of other foreign corporations which are shareholders, etc. of the foreign corporation (hereinafter referred to as "Other Foreign Corporations" in this item): The ratio obtained by multiplying the ratio of voting rights (meaning the ratio of the number of voting rights held by the shareholders, etc. out of the total number; hereinafter the same applies in this paragraph) of the individual or domestic corporation pertaining to the relevant Other Foreign Corporations by the relevant Other Foreign Corporations' ratio of voting rights pertaining to the foreign corporation (where there are two or more Other Foreign Corporations, the sum of the ratios calculated for each of them)

(ii) Where a single foreign corporation or two or more foreign corporations intervene between the foreign corporation and any other foreign corporation (limited to any other foreign corporation, the whole or a part of whose voting rights are held by an individual or domestic corporation; hereinafter referred to as the "Other Foreign Corporation" in this paragraph) (hereinafter that intervening foreign corporation is referred to as a "Capital Contribution-Related Foreign Corporation" in this paragraph) and the individual or domestic corporation, the relevant Other Foreign Corporation, Capital Contribution-Related Foreign Corporation and the foreign corporation have a linkage through holding the voting rights: The ratio obtained by multiplying the ratio of voting rights of the individual or domestic corporation pertaining to the relevant Other Foreign Corporation sequentially by the relevant Other Foreign Corporation's ratio of voting rights pertaining to the Capital



Contribution-Related Foreign Corporation, by the capital contribution-related foreign corporation's ratio of voting rights pertaining to other Capital Contribution-Related Foreign Corporations, and by the capital contribution-related foreign corporation's ratio of voting rights pertaining to the foreign corporation (where there are two or more linkages, the sum of the ratios calculated for each of them).

(5) The amount of a Dividend of Surplus, etc. specified by Cabinet Order as being receivable based on the claims vested in the shares, etc. of a foreign corporation held indirectly as prescribed in Article 66-6, paragraph (2), item (v) of the Act is the amount of a Dividend of Surplus, etc. obtained by multiplying the total amount of a Dividend of Surplus, etc. receivable based on the claims vested in the shares, etc. of a foreign corporation by the ratio specified respectively in the following items for the category of cases listed in the relevant items (where falling under both of the following cases, the sum of the ratios specified respectively as follows):

(i) where an individual or domestic corporation holds the whole or a part of the claims vested in the shares, etc. of other foreign corporations which are shareholders, etc. of the foreign corporation (hereinafter referred to as "Other Foreign Corporations" in this item): The ratio obtained by multiplying the ratio of claims (meaning the ratio of the amount of a Dividend of Surplus, etc. receivable based on the claims vested in the shares, etc. held by the shareholders, etc. out of the total amount; hereinafter the same applies in this paragraph) of the individual or domestic corporation pertaining to the relevant Other Foreign Corporations by the relevant Other Foreign Corporations' ratio of claims pertaining to the foreign corporation (where there are two or more Other Foreign Corporations, the sum of the ratios calculated for each of them);

(ii) where a single foreign corporation or two or more foreign corporations intervene between the foreign corporation and any other foreign corporation (limited to any other foreign corporation, the whole or a part of whose claims vested in the shares, etc. are held by an individual or domestic corporation; hereinafter referred to as the "Other Foreign Corporation" in this paragraph) (hereinafter that intervening foreign corporation is referred to as a "Capital Contribution-Related Foreign Corporation" in this paragraph) and the individual or domestic corporation, the relevant Other Foreign Corporation, Capital Contribution-Related Foreign Corporation and the foreign corporation have a linkage through holding the claims vested in the shares, etc.: The ratio obtained by multiplying the ratio of claims of the individual or domestic corporation pertaining to the relevant Other Foreign Corporation sequentially by the relevant Other Foreign Corporation's ratio of claims pertaining to the Capital Contribution-Related Foreign Corporation, by the

- capital contribution-related foreign corporation's ratio of claims pertaining to other Capital Contribution-Related Foreign Corporations, and by the capital contribution-related foreign corporation's ratio of claims pertaining to the foreign corporation (where there are two or more linkages, the sum of the ratios calculated for each of them).
- (6) A person who has a special relationship specified by Cabinet Order with a Resident or a domestic corporation prescribed in Article 66-6, paragraph (2), item (vi) of the Act is an individual or corporation listed as follows:
- (i) an individual listed as follows:
    - (a) a relative of the Resident;
    - (b) a person in a relationship with the Resident where a marital relationship is de facto, though a marriage has not been registered;
    - (c) an employee of the Resident;
    - (d) a person other than those listed in (a) to (c) who maintains their living by receiving money or any other assets from the Resident;
    - (e) a relative of any of the persons listed in (b) to (d) who depends on the person for their livelihood;
    - (f) an officer of the domestic corporation and a person listed in the items of Article 72-3 of the Order for Enforcement of the Corporation Tax Act who is related to the officer;
  - (ii) a corporation listed as follows:
    - (a) where a Resident or a domestic corporation (including an individual who has a special relationship prescribed in the preceding item with the resident or domestic corporation; hereinafter referred to as a "Resident, etc." in this paragraph) controls any other corporation, the relevant other corporation;
    - (b) where a Resident, etc. or a corporation which has a special relationship prescribed in (a) with the Resident, etc. controls any other corporation, the relevant other corporation;
    - (c) where a Resident, etc. or a corporation which has a special relationship prescribed in (a) and (b) with the Resident, etc. controls any other corporation, the relevant other corporation;
    - (d) where any of the two or more corporations which have a special relationship prescribed in (a) to (c) with the same person is a Resident, etc., a corporation other than the one falling under the Resident, etc. out of those which have the special relationship with the same person.
- (7) The provisions of Article 4, paragraph (3) of the Order for Enforcement of the Corporation Tax Act apply mutatis mutandis when controlling any other corporation listed in (a) to (c) of item (ii) of the preceding paragraph.
- (8) The amount of expenses specified by Cabinet Order set forth in Article 66-6, paragraph (2), item (ii) of the Act in which the terms and phrases are replaced

pursuant to the provisions of paragraph (3) of the same Article is the sum of personnel expenses for officers and employees of a specified foreign subsidiary company, etc. engaged in the business at the specified foreign subsidiary company, etc. prescribed in paragraph (3) of the same Article (limited to the amount of income calculated in accordance with the Provisions of the Laws and Regulations of Japan prescribed in paragraph (1), item (i) of the preceding Article or pursuant to the provisions of paragraph (2) of the same Article or the amount to be included in deductible expenses for calculating the amount of a loss for the relevant business year of the specified foreign subsidiary company, etc.).

(Determination of Business of Specified Foreign Subsidiary Companies)

Article 39-17 (1) The persons specified by Cabinet Order prescribed in Article 66-6, paragraph (4), item (i) of the Act are any of the following:

- (i) other consolidated corporations which have the consolidated full controlling interest with a consolidated corporation listed in the items of Article 68-90, paragraph (1) of the Act which pertains to a specified foreign subsidiary company, etc. prescribed in Article 66-6, paragraph (4) of the Act (hereinafter referred to as a "Specified Foreign Subsidiary Company, etc." in this paragraph) mainly engaged in the business listed in item (i) of the same paragraph;
- (ii) a person who holds over 50 percent of the total number or total amount of the Issued Shares, etc. of a domestic corporation listed in the items of Article 66-6, paragraph (1) of the Act which pertains to a Specified Foreign Subsidiary Company, etc. mainly engaged in the business listed in Article 66-6, paragraph (4), item (i) of the Act (excluding a person falling under any of those listed in the items of Article 40-4, paragraph (1), items of Article 66-6, paragraph (1), items of Article 68-90, paragraph (1) of the Act and the preceding item who is related to the Specified Foreign Subsidiary Company, etc.);
- (iii) a person who holds over 50 percent of the total number or total amount of the Issued Shares, etc. of a consolidated corporation listed in the items of Article 68-90, paragraph (1) of the Act (where the consolidated corporation is a consolidated subsidiary corporation, a consolidated parent corporation related to the consolidated corporation) which pertains to a Specified Foreign Subsidiary Company, etc. mainly engaged in the business listed in Article 66-6, paragraph (4), item (i) of the Act (excluding a person falling under any of those listed in the items of Article 40-4, paragraph (1), items of Article 66-6, paragraph (1), items of Article 68-90, paragraph (1) of the Act and the preceding two items who is related to the Specified Foreign Subsidiary Company, etc.);

- (iv) where a person listed in the items of Article 40-4, paragraph (1), items of Article 66-6, paragraph (1) or items of Article 68-90, paragraph (1) of the Act who is related to a Specified Foreign Subsidiary Company, etc. mainly engaged in the business listed in Article 66-6, paragraph (4), item (i) of the Act holds the shares, etc. indirectly pertaining to the Specified Foreign Subsidiary Company, etc. (the shares, etc. mean the number of the shares or the amount of the capital contributions of a foreign corporation specified by Cabinet Order as being held through indirect ownership as prescribed in Article 66-6, paragraph (2), item (iii) of the Act), the Other Foreign Corporations prescribed in paragraph (3), item (i) of the preceding Article or the other foreign corporation and capital contribution-related foreign corporation(s) prescribed in item (ii) of the same paragraph which pertain to the shares, etc. held indirectly;
- (v) a person who has a special relationship specified by Cabinet Order prescribed in Article 66-6, paragraph (2), item (vi) of the Act with any of the persons listed as follows (excluding a person falling under any of those listed in the items of Article 40-4, paragraph (1), items of Article 66-6, paragraph (1), items of Article 68-90, paragraph (1) of the Act and the preceding items who is related to a Specified Foreign Subsidiary Company, etc. mainly engaged in the business listed in Article 66-6, paragraph (4), item (i) of the Act):
  - (a) a Specified Foreign Subsidiary Company, etc. mainly engaged in the business listed in Article 66-6, paragraph (4), item (i) of the Act;
  - (b) a person listed in the items of Article 40-4, paragraph (1), items of Article 66-6, paragraph (1) or items of Article 68-90, paragraph (1) of the Act who is related to a Specified Foreign Subsidiary Company, etc. mainly engaged in the business listed in Article 66-6, paragraph (4), item (i) of the Act;
  - (c) a person listed in the preceding items.
- (2) The case specified by Cabinet Order prescribed in Article 66-6, paragraph (4), item (i) of the Act is any of the cases specified respectively in the following items, in accordance with the category of the principal business to be conducted for the relevant business year of a specified foreign subsidiary company, etc. prescribed in the same paragraph:
  - (i) wholesale business: where, out of the total revenue from selling inventory assets for the relevant business year (where there are any commissions to be received for agent or intermediary services for the buying or selling of inventory assets for the relevant business year, the revenues include the amount from the transactions for which the commissions were generated; hereinafter referred to as the "Amount of Sales Transactions" in this item), the ratio of the sum of the Amount of Sales Transactions with a person other than affiliated persons (meaning those listed in the items of Article 40-4,

- paragraph (1), items of Article 66-6, paragraph (1), items of Article 68-90, paragraph (1) of the Act and the preceding items who are related to the specified foreign subsidiary company, etc.; hereinafter the same applies in this paragraph and the following paragraph) exceeds 50 percent, or out of the sum of the acquisition costs for acquiring inventory assets for the relevant business year (where there are any commissions to be received for agent or intermediary services for the buying or selling of inventory assets for the relevant business year, the acquisition costs include the amount of transactions for which the commissions were generated; hereinafter referred to as the "Amount of Purchase Transactions" in this item), the ratio of the sum of the Amount of Purchase Transactions with a person other than affiliated persons exceeds 50 percent;
- (ii) banking business: where, out of the sum of the total interest received for the relevant business year, the ratio of the sum of the interest to be received from a person other than affiliated persons exceeds 50 percent, or out of the sum of the total interest paid for the relevant business year, the ratio of the sum of the interest to be paid to a person other than affiliated persons exceeds 50 percent;
  - (iii) trust business: where, out of the sum of the total trust charge for the relevant business year, the ratio of the sum of the trust charge to be received from a person other than affiliated persons exceeds 50 percent;
  - (iv) financial instruments business: where, out of the sum of the total commissions received (including profits from the buying and selling of securities) for the relevant business year, the ratio of the sum of the commissions to be received from a person other than affiliated persons exceeds 50 percent;
  - (v) insurance business: where, out of the sum of the total premium income for the relevant business year, the ratio of the sum of the premium income to be received from a person other than affiliated persons (where the premium income pertains to reinsurance, limited to premium income from insurance for assets held by a person other than affiliated persons or damages incurred by a person other than affiliated persons) exceeds 50 percent;
  - (vi) water transportation business or air transportation business: where, out of the total revenue from the operation or rental of vessels or operation or rental of aircraft for the relevant business year, the ratio of the sum of the revenue to be received from a person other than affiliated persons exceeds 50 percent.
- (3) Where transactions prescribed in the preceding paragraph between a specified foreign subsidiary company, etc. and an affiliated person related to the specified foreign subsidiary company, etc. are conducted indirectly via a person other than an affiliated person related to the specified foreign

subsidiary company, etc. (hereinafter referred to as a "Non-Affiliated Person" in this paragraph), transactions between the specified foreign subsidiary company, etc. and the Non-Affiliated Person are deemed to have been conducted directly between the specified foreign subsidiary company, etc. and the affiliated person and the provisions of the items of the preceding paragraph are applied, except in the case where there are justifiable grounds for having the Non-Affiliated Person intervene in the transactions.

- (4) The water areas specified by Cabinet Order prescribed in Article 66-6, paragraph (4), item (ii) of the Act are inland water and territorial sea and exclusive economic zones or water areas equivalent to continental shelves related to a state or territory prescribed in the same item.
- (5) The case specified by Cabinet Order prescribed in Article 66-6, paragraph (4), item (ii) of the Act is any of the cases specified respectively in the following items, in accordance with the category of the principal business to be conducted for the relevant business year of a specified foreign subsidiary company, etc. prescribed in the same paragraph:
- (i) real estate business: where conducting a buying and selling or rental business of real estate (including acts to let others use the real estate) (real estate includes the rights thereon; hereinafter the same applies in this item) mainly located in the state of the head office, providing agent or intermediary services for the buying and selling or rental business of the real estate, and managing the real estate;
  - (ii) rental and leasing business: where conducting a rental business for goods to be provided for use mainly in the state of the head office;
  - (iii) business other than those listed in paragraph (2) and the preceding two items: Where conducting a business mainly in the state of the head office.

(Calculation of Foreign Corporation Tax on Taxable Income of Specified Foreign Subsidiary Companies)

Article 39-18 (1) The amount calculated as specified by Cabinet Order prescribed in Article 66-7, paragraph (1) of the Act is the amount obtained by multiplying the amount of foreign corporation tax to be imposed on a specified foreign subsidiary company, etc. prescribed in the same paragraph (hereinafter referred to as a "Specified Foreign Subsidiary Company, etc." in this Article) on its income for a business year containing eligible income (meaning eligible income prescribed in Article 66-6, paragraph (2), item (ii) of the Act; hereinafter the same applies in this paragraph and paragraph (1) and paragraph (2) of the following Article) (hereinafter that business year is referred to as a "Taxable Business Year" through to paragraph (4)) by the ratio of the taxable income pertaining to a domestic corporation prescribed in Article 66-7, paragraph (1) of the Act out of the sum of the eligible income for the

relevant Taxable Business Year (where there is any amount to be deducted as prescribed in Article 39-15, paragraph (1), item (iv) pursuant to the provisions of paragraph (1) (limited to the part concerning item (iv)) or paragraph (2) (limited to the part concerning item (xvii) of the same Article, or any amount of a deductible dividend, etc. prescribed in paragraph (3) of the same Article to be deducted pursuant to the provisions of the same paragraph, the amount obtained by adding the amounts) and the amount of a Dividend of Surplus, etc. to be deducted for calculating the amount of the eligible income (where the amount exceeds the taxable income, the amount equivalent to the taxable income).

(2) In the case where a Specified Foreign Subsidiary Company, etc. has been subject to two or more foreign corporation taxes or to a foreign corporation tax twice or more on its income for a Taxable Business Year, when a domestic corporation related to the Specified Foreign Subsidiary Company, etc. seeks the application of the provisions of Article 66-7, paragraph (1) (including the cases where it is applied pursuant to the provisions of paragraph (2) of the same Article by deeming the amount to be as specified therein; hereinafter the same applies in this Article) or Article 68-91, paragraph (1) (including the cases where it is applied pursuant to the provisions of paragraph (2) of the same Article by deeming the amount to be as specified therein; hereinafter the same applies in this Article) of the Act, regarding the amount of the foreign corporation taxes in two or more business years or consolidated business years; with respect to the application of the provisions of Article 66-7, paragraph (1) of the Act for a business year following the first one of those two or more business years or consolidated business years, the amount obtained by deducting the amount listed in item (ii) (the amount listed in item (iii), when seeking the application of the provisions of Article 66-7, paragraph (1) of the Act for the first time after receiving the application of the provisions of Article 68-91, paragraph (1) of the Act) from the amount listed in item (i) is deemed to be the calculated amount prescribed in the preceding paragraph:

(i) the amount calculated pursuant to the provisions of the preceding paragraph regarding the sum of the amount of foreign corporation taxes that were imposed on income for the relevant Taxable Business Year by the final day of a business year subject to the provisions of Article 66-7, paragraph (1) of the Act (hereinafter referred to as the "Applicable Business Year" in this paragraph) (the amount of foreign corporation taxes is limited to those to which the provisions of Article 66-7, paragraph (1) or Article 68-91, paragraph (1) of the Act, pursuant to the provisions of paragraph (4) or Article 39-118, paragraph (4); hereinafter the same applies in this paragraph);

(ii) the amount calculated pursuant to the provisions of the preceding

- paragraph regarding the sum of the amount of foreign corporation taxes that were imposed on income for the relevant Taxable Business Year by the day preceding the first day of the Applicable Business Year;
- (iii) the amount calculated pursuant to the provisions of Article 39-118, paragraph (1) regarding the sum of the amount of foreign corporation taxes that were imposed on income for the relevant Taxable Business Year by the day preceding the first day of the Applicable Business Year.
- (3) Out of the amount of foreign corporation taxes that were imposed on a Specified Foreign Subsidiary Company, etc. on its income for a Taxable Business Year, the amount deemed to be the amount of creditable foreign corporation taxes prescribed in Article 66-7, paragraph (1) of the Act that is to be paid by a domestic corporation related to the Specified Foreign Subsidiary Company, etc., pursuant to the provisions of the same paragraph, (hereinafter referred to as the "Amount of Creditable Foreign Corporation Taxes" in this Article) is deemed to be payable by the domestic corporation in a business year specified respectively in the following items for the category of foreign corporation taxes listed in the relevant items:
- (i) the foreign corporation tax that was imposed on the domestic corporation on its income for the relevant Taxable Business Year of the Specified Foreign Subsidiary Company, etc. on or prior to the final day of the business year for which the provisions of Article 66-6, paragraph (1) of the Act are applied regarding the amount equivalent to the taxable income for the relevant Taxable Business Year: The business year subject to the provisions of Article 66-6, paragraph (1) of the Act;
- (ii) the foreign corporation tax that was imposed on the domestic corporation on its income for the relevant Taxable Business Year of the Specified Foreign Subsidiary Company, etc. after the final day of the business year for which the provisions of Article 66-6, paragraph (1) of the Act are applied regarding the amount equivalent to the taxable income for the relevant Taxable Business Year (where the provisions of Article 66-7, paragraph (2) of the Act are applied, after the final day of the consolidated business year for which the provisions of Article 68-90, paragraph (1) of the Act were applied regarding the amount equivalent to the individually taxable income prescribed in the same paragraph for the relevant Taxable Business Year): the business year involving the day on which the tax was imposed.
- (4) Where a Specified Foreign Subsidiary Company, etc. has been subject to two or more foreign corporation taxes or to a foreign corporation tax twice or more on its income for a Taxable Business Year, a domestic corporation to which the provisions of Article 66-6, paragraph (1) of the Act are applied, regarding the amount equivalent to the taxable income for the relevant Taxable Business Year of the Specified Foreign Subsidiary Company, etc., may choose whether or



not it will seek the application of the provisions of Article 66-7, paragraph (1) of the Act regarding the amount of respective foreign corporation taxes on the taxable income subject to the provisions of Article 66-6, paragraph (1) of the Act.

- (5) In the case where a domestic corporation was subject to the provisions of Article 66-7, paragraph (1) of the Act, regarding the amount of foreign corporation tax imposed on the income of a Specified Foreign Subsidiary Company, etc. related to the domestic corporation, when the amount of foreign corporation tax was reduced in the relevant business year of the domestic corporation that starts within seven years following the first day of the business year subject to the provisions of the same paragraph (hereinafter referred to as the "Applicable Business Year" in this paragraph), it is deemed that the amount that remains after deducting the amount listed in item (ii) from the amount listed in item (i) has been reduced from the part of the amount of foreign corporation tax that was deemed to be the Amount of Creditable Foreign Corporation Tax payable by the domestic corporation, pursuant to the provisions of paragraph (1) of the same Article, as on the day of the reduction of the foreign corporation tax:
- (i) the part of the amount of foreign corporation tax that was deemed to be the Amount of Creditable Foreign Corporation Tax payable by the domestic corporation in the Applicable Business Year;
  - (ii) the part that is deemed to be the Amount of Creditable Foreign Corporation Tax payable by the domestic corporation when the provisions of Article 66-7, paragraph (1) of the Act are applied in the Applicable Business Year to the amount of foreign corporation tax after the reduction.
- (6) In the case where a domestic corporation was subject to the provisions of Article 68-91, paragraph (1) of the Act, regarding the amount of foreign corporation tax imposed on the income of a Specified Foreign Subsidiary Company, etc. related to the domestic corporation, when the amount of foreign corporation tax was reduced in the relevant business year that starts within seven years following the first day of the consolidated business year subject to the provisions of the same paragraph (hereinafter referred to as the "Applicable Consolidated Business Year" in this paragraph), it is deemed that the amount that remains after deducting the amount listed in item (ii) from the amount listed in item (i) has been reduced from the part of the amount of foreign corporation tax that was deemed to be the amount of individually creditable foreign corporation tax payable by the domestic corporation, pursuant to the provisions of paragraph (1) of the same Article (hereinafter referred to as the "Amount of Individually Creditable Foreign Corporation Tax" in this Article), as on the day of the reduction of the foreign corporation tax:
- (i) the part of the amount of foreign corporation tax that was deemed to be the

- Amount of Individually Creditable Foreign Corporation Tax payable by the domestic corporation in the Applicable Consolidated Business Year;
- (ii) the part that is deemed to be the Amount of Individually Creditable Foreign Corporation Tax payable by the domestic corporation when the provisions of Article 68-91, paragraph (1) of the Act are applied in the Applicable Consolidated Business Year to the amount of foreign corporation tax after the reduction.
- (7) Where the Amount of Creditable Foreign Corporation Tax or individually creditable foreign corporation tax has been deemed to have been reduced, pursuant to the provisions of paragraph (5) or the preceding paragraph, the provisions of Article 69, paragraph (8) of the Corporation Tax Act are applied as specified in Article 150 (excluding paragraph (2)) of the Order for Enforcement of the Corporation Tax Act. In this case, in paragraph (1) of the same Article, the phrase "the domestic corporation pertaining to the amount of foreign corporation tax" is deemed to be replaced with "the domestic corporation pertaining to the amount of foreign corporation tax (including any part of the amount of foreign corporation tax to be imposed on the income of a Specified Foreign Subsidiary Company, etc. prescribed in Article 66-7, paragraph (1) (Credit for Foreign Tax on Taxable Income of Specified Foreign Subsidiary Companies for Domestic Corporations) or Article 68-91, paragraph (1) (Credit for Foreign Tax on Individually Taxable Income of Specified Foreign Subsidiary Companies for Consolidated Corporations) of the Act on Special Measures Concerning Taxation, which is deemed to be payable by the domestic corporation pursuant to these provisions; hereinafter the same applies in this paragraph)"; and the phrase "amount of creditable foreign corporation tax that" is deemed to be replaced with "amount of creditable foreign corporation tax (including the amount which is deemed to be payable by the domestic corporation pursuant to the provisions of Article 66-7, paragraph (1) of the Act on Special Measures Concerning Taxation (including the case where it is applied by deeming the amount as prescribed in paragraph (2) of the same Article to be the amount specified therein)) that"; and the term "the amount of reduced creditable foreign corporation tax" is deemed to be replaced with "the amount of reduced creditable foreign corporation tax (including the amount of creditable foreign corporation tax or the Amount of Individually Creditable Foreign Corporation Tax that is deemed to have been reduced pursuant to the provisions of Article 39-18, paragraph (5) or paragraph (6) (Reduction of Foreign Corporation Tax on Taxable Income of Specified Foreign Subsidiary Companies) of the Order for Enforcement of the Act on Special Measures Concerning Taxation)".
- (8) Where there is any amount included in the gross profits pursuant to the provisions of Article 66-6, paragraph (1) of the Act for calculating the amount

of income for the relevant business year of a domestic corporation listed in the items of the same paragraph, the amount included in gross profits is to be included in the foreign income prescribed in the main clause of Article 142, paragraph (3) of the Order for Enforcement of the Corporation Tax Act for calculating the maximum creditable amount prescribed in Article 69, paragraph (1) of the Corporation Tax Act for the relevant business year of the domestic corporation; provided, however, that in the case where the state of the head office of a Specified Foreign Subsidiary Company, etc. related to the domestic corporation is a state or territory that does not impose any foreign corporation taxes prescribed in Article 141, paragraph (1) of the same Order on income of the Specified Foreign Subsidiary Company, etc., the amount to be included in the foreign income is the amount equivalent to one-third of the amount included in the gross profits.

- (9) The part of the amount of foreign corporation taxes listed in the items of paragraph (3) that are deemed to be the amount of creditable foreign corporation tax payable by a domestic corporation related to a Specified Foreign Subsidiary Company, etc., pursuant to the provisions of Article 66-7, paragraph (1) of the Act, is to be included in foreign income prescribed in the main clause of Article 142, paragraph (3) of the Order for Enforcement of the Corporation Tax Act for calculating the maximum creditable amount prescribed in Article 69, paragraph (1) of the Corporation Tax Act for a business year specified respectively in the relevant items of the domestic corporation.
- (10) Out of the amount deemed to have been reduced from the amount of creditable foreign corporation tax or individually creditable foreign corporation tax, pursuant to the provisions of paragraph (5) or paragraph (6), the amount equivalent to the amount to be appropriated, pursuant to the provisions of paragraph (7), for deduction from the amount of creditable foreign corporation tax to be paid prescribed in Article 150, paragraph (1) of the Order for Enforcement of the Corporation Tax Act under the provisions of the same paragraph or for deduction from the amount exceeding the maximum creditable amount prescribed in paragraph (3) of the same Article under the provisions of the same paragraph is included in deductible expenses for calculating the amount of income for a business year of a domestic corporation prescribed in paragraph (5) or paragraph (6) for making the deduction. In this case, the amount to be included in deductible expenses is to be allocated as the amount of deductible expenses for calculating the amount of foreign income prescribed in the main clause of Article 142, paragraph (3) of the same Order.
- (11) The business year specified by Cabinet Order prescribed in Article 66-7, paragraph (3) of the Act is the business year specified respectively in the items of paragraph (3), in accordance with the category of the amount of foreign

corporation tax imposed on the income of a Specified Foreign Subsidiary Company, etc.

(Calculation of the Specified Taxable Income of Specified Foreign Subsidiary Companies)

Article 39-19 (1) The amount specified by Cabinet Order prescribed in Article 66-8, paragraph (3), item (iii) of the Act is the amount obtained by multiplying the eligible income pertaining to a specified foreign subsidiary company, etc.

prescribed in the same item (hereinafter referred to as a "Specified Foreign Subsidiary Company, etc." in this Article) (the eligible income is limited to that which pertains to taxable income to be included in gross profits in the calculation of the amount of income for a business year, prescribed in the same item, of a domestic corporation; hereinafter the same applies in this paragraph) by the ratio of the shares, etc. for considering the claims held directly by the domestic corporation (meaning the number or the amount of shares, etc. of a foreign corporation held by a domestic corporation (where the foreign corporation has issued the shares, etc. in which different claims are vested, the number or the amount obtained by multiplying the Issued Shares, etc. of the foreign corporation by the ratio of the amount of a Dividend of Surplus, etc. that the domestic corporation can receive based on the claims out of the total amount); hereinafter the same applies in this Article) out of the total Issued Shares, etc. of the Specified Foreign Subsidiary Company, etc. at the end of the relevant business year of the Specified Foreign Subsidiary Company, etc. that pertains to the eligible income.

(2) The amount specified by Cabinet Order prescribed in Article 66-8, paragraph (3), item (ii) of the Act is the sum of the amounts obtained by multiplying the eligible income of a specified subsidiary company, etc. for the relevant business years (the eligible income is limited to that which pertains to taxable income that was included in gross profits in the calculation of the amount of income for the business years within the preceding ten years prescribed in the same item; hereinafter the same applies in this paragraph) by the ratio of the shares, etc. for considering the claims held directly by the domestic corporation out of the total Issued Shares, etc. of the Specified Foreign Subsidiary Company, etc. at the end of the relevant business years of the Specified Foreign Subsidiary Company, etc. that pertains to the eligible income.

(3) With respect to the application of the provisions of Article 66-8, paragraph (3) of the Act in or after the business year containing the day of a qualified merger prescribed in paragraph (3) of the same Article (referred to as a "qualified merger, etc." in the following paragraph) of a domestic corporation set forth in the same paragraph, in the case where the provisions of the same paragraph apply, the taxed amount of income specified in the items of paragraph (5) of the

same Article (meaning the amount listed in paragraph (3), item (ii) of the same Article; hereinafter the same applies in this Article) or the individually taxed amount of income (meaning the amount listed in Article 68-92, paragraph (3), item (ii) of the Act; hereinafter the same applies in this Article) is deemed to be the taxed amount of income for a business year of the domestic corporation specified respectively in the following items for the category of business years or consolidated business years listed in the relevant items of a merged corporation, split corporation, corporation making a capital contribution in kind, or corporation effecting post-formation acquisition of assets and/or liabilities (referred to as a "merged corporation, etc." in the following paragraph):

- (i) a business year within ten years prior to the merger prescribed in Article 66-8, paragraph (5), item (i) of the Act (hereinafter referred to as a "Business Year Within Ten Years prior to the Merger" in this paragraph and the following paragraph) of a merged corporation pertaining to a qualified merger or a business year within ten years prior to the company split prescribed in paragraph (5), item (ii) of the same Article (hereinafter referred to as a "Business Year Within Ten Years prior to the Company Split" through to paragraph (5)) of a split corporation pertaining to a qualified split-off-type company split (excluding a Business Year Within Ten Years prior to the Merger or Business Year Within Ten Years prior to the Company Split listed in the following item): The relevant business year of the domestic corporation including the first day of a Business Year Within Ten Years prior to the Merger of the merged corporation or the relevant business year of the domestic corporation including the first day of a Business Year Within Ten Years prior to the Company Split of the split corporation;
- (ii) a Business Year Within Ten Years prior to the Merger of a merged corporation pertaining to a qualified merger that started on or after the first day of the business year containing the day of the qualified merger of the domestic corporation (hereinafter referred to as the "Business Year of the Merger" in this item) or a Business Year Within Ten Years prior to the Company Split of a split corporation pertaining to a qualified split-off-type company split that started on or after the first day of the business year containing the day of the qualified split-off-type company split of the domestic corporation (hereinafter referred to as the "Business Year of the Split Succession" in this item): The business year containing the day preceding the first day of the Business Year of the Merger or Business Year of the Split Succession of the domestic corporation;
- (iii) a business year within ten years prior to the company split, etc. prescribed in Article 66-8, paragraph (5), item (iii) of the Act (hereinafter referred to as a "Business Year Within Ten Years prior to the Company Split, etc." in this

- Article) of a split corporation, etc. (meaning a split corporation, corporation making a capital contribution in kind, or corporation effecting post-formation acquisition of assets and/or liabilities; hereinafter the same applies in this paragraph and paragraph (6)) pertaining to a qualified spin-off-type company split, etc. (meaning a qualified spin-off-type company split, etc. prescribed in Article 66-8, paragraph (5), item (iii) of the Act; hereinafter the same applies in this paragraph and paragraph (6)) (excluding a Business Year Within Ten Years prior to the Company Split when falling under the case listed in the following item and a Business Year Within Ten Years prior to the Company Split, etc. listed in item (v)): The relevant business year of the domestic corporation including the first day of a Business Year Within Ten Years prior to the Company Split, etc. of the split corporation, etc.;
- (iv) a business year of a split corporation, etc. pertaining to a qualified spin-off-type company split, etc. that includes the day of the qualified spin-off-type company split, etc. or a Business Year Within Ten Years prior to the Company Split, etc. of the split corporation, etc. where the first day of the consolidated business year is before the first day of the business year of the domestic corporation that includes the day of the qualified spin-off-type company split, etc.: The relevant business year of the domestic corporation including the final day of a Business Year Within Ten Years prior to the Company Split, etc. of the split corporation, etc.;
- (v) a Business Year Within Ten Years prior to the Company Split, etc. of a split corporation, etc. pertaining to a qualified spin-off-type company split, etc. that started on or after the first day of a business year of the domestic corporation including the day of the qualified spin-off-type company split, etc. (hereinafter referred to as the "Business Year of the Split Succession, etc." in this item): The relevant business year of the domestic corporation including the day preceding the first day of the Business Year of the Split Succession, etc.
- (4) In the case where the first day of the oldest business year or consolidated business year out of the relevant business years or consolidated business years that started within ten years prior to the first day of the business year containing the day of a qualified merger, etc. of a domestic corporation set forth in Article 66-8, paragraph (5) of the Act (hereinafter referred to as the "First Day of the Business Year of the Domestic Corporation Ten Years before" in this paragraph) falls after the first day of the oldest business year or consolidated business year out of a business year within ten years prior to the merger, Business Year Within Ten Years prior to the Company Split or Business Year Within Ten Years prior to the Company Split, etc. of a merged corporation(s), etc. pertaining to the qualified merger, etc. (hereinafter referred to as a "Business Year of the Merged Corporation(s), etc. Within the Preceding

Ten Years" in this paragraph) (in the case of a qualified merger, etc. made among two or more merged corporations, etc., after the first day of the relevant business year or consolidated business year of the merged corporations, etc. whichever started the earliest; hereinafter referred to as the "First Day of the Business Year of the Merged Corporations, etc. Ten Years before" in this paragraph), the provisions of the preceding paragraph apply by deeming the respective periods classifying the period between the First Day of the Business Year of the Merged Corporations, etc. Ten Years before and the day preceding the First Day of the Business Year of the Domestic Corporation Ten Years before (in the case where the domestic corporation is to be established through the qualified merger, etc., the day preceding the first day of the business year of the domestic corporation including the day of the qualified merger, etc.; hereinafter the same applies in this paragraph) by the corresponding Business Year of the Merged Corporation(s), etc. Within the Preceding Ten Years pertaining to the First Day of the Business Year of the Merged Corporations, etc. Ten Years before (for the period including the preceding day, the period between the first day of the business year or consolidated business year of the merged corporation, etc. including the preceding day and the day preceding the First Day of the Business Year of the Domestic Corporation Ten Years before) to be the relevant business year of the domestic corporation.

(5) The amount calculated as specified by Cabinet Order prescribed in Article 66-8, paragraph (5), item (ii) of the Act is the amount specified respectively in the following items for the category of the taxed amount of income or individually taxed amount of income listed in the relevant items:

(i) the taxed amount of income: The amount obtained by multiplying respectively the taxed amount of income for a Business Year Within Ten Years prior to the Company Split of a split corporation pertaining to a qualified split-off-type company split by the ratio of the shares, etc. for considering the claims held directly that are listed in (b) out of the shares, etc. for considering the claims held directly that are listed in (a):

(a) the Specified Foreign Subsidiary Company, etc.'s shares, etc. for considering the claims held which the split corporation held directly immediately prior to the qualified split-off-type company split;

(b) the Specified Foreign Subsidiary Company, etc.'s shares, etc. for considering the claims held directly which are to be transferred from the split corporation to a domestic corporation as set forth in Article 66-8, paragraph (5) of the Act through the qualified split-off-type company split;

(ii) the individually taxed amount of income: The amount obtained by multiplying respectively the individually taxed amount of income for a Business Year Within Ten Years prior to the Company Split of a split corporation pertaining to a qualified split-off-type company split by the ratio

- of the shares, etc. for considering the claims held directly that are listed in (b) out of the shares, etc. for considering the claims held directly that are listed in (a):
- (a) the Specified Foreign Subsidiary Company, etc.'s shares, etc. for considering the claims held which the split corporation held directly immediately prior to the qualified split-off-type company split;
  - (b) the Specified Foreign Subsidiary Company, etc.'s shares, etc. for considering the claims held directly which are to be transferred from the split corporation to a domestic corporation set forth in Article 66-8, paragraph (5) of the Act through the qualified split-off-type company split.
- (6) The amount calculated as specified by Cabinet Order prescribed in Article 66-8, paragraph (5), item (iii) of the Act is the amount specified respectively in the following items for the category of the taxed amount of income or individually taxed amount of income listed in the relevant items:
- (i) the taxed amount of income: The amount obtained by multiplying respectively the taxed amount of income for a Business Year Within Ten Years prior to the Company Split, etc. of a split corporation, etc. pertaining to a qualified spin-off-type company split, etc. by the ratio of the shares, etc. for considering the claims held directly that are listed in (b) out of the shares, etc. for considering the claims held directly that are listed in (a):
    - (a) the Specified Foreign Subsidiary Company, etc.'s shares, etc. for considering the claims held directly which the split corporation, etc. held immediately prior to the qualified spin-off-type company split, etc.;
    - (b) the Specified Foreign Subsidiary Company, etc.'s shares, etc. for considering the claims held directly which are to be transferred from the split corporation, etc. to a domestic corporation set forth in Article 66-8, paragraph (5) of the Act through the qualified spin-off-type company split;
  - (ii) the individually taxed amount of income: The amount obtained by multiplying respectively the individually taxed amount of income for a Business Year Within Ten Years prior to the Company Split, etc. of a split corporation, etc. pertaining to a qualified spin-off-type company split, etc. by the ratio of the shares, etc. for considering the claims held directly that are listed in (b) out of the shares, etc. for considering the claims held directly that are listed in (a):
    - (a) the Specified Foreign Subsidiary Company, etc.'s shares, etc. for considering the claims held which the split corporation, etc. held directly immediately prior to the qualified spin-off-type company split, etc.;
    - (b) the Specified Foreign Subsidiary Company, etc.'s shares, etc. for considering the claims held directly which are to be transferred from the split corporation, etc. to a domestic corporation set forth in Article 66-8, paragraph (5) of the Act through the qualified spin-off-type company split.



- (7) With regard to the application of the provisions of the Order for Enforcement of the Corporation Tax Act in the case where the provisions of Article 66-8, paragraph (1) of the Act apply, the phrase "of the Act" in Article 9, paragraph (1), item (i), (c) of the same Order is deemed to be replaced with "of the Act and Article 66-8 (Exclusion from Gross Profits of Dividend of Surplus, etc. to be Received from Specified Foreign Subsidiary Company, etc.) of the Act on Special Measures Concerning Taxation)".
- (8) With regard to the application of the provisions of the Order for Enforcement of the Corporation Tax Act in the case where the provisions of Article 66-8, paragraph (2) of the Act apply, the phrase "of the Act" in Article 9, paragraph (1), item (i), (c) of the same Order is deemed to be replaced with "of the Act (including cases where applied following the deemed replacement of terms pursuant to the provisions of the first sentence of Article 66-8, paragraph (2) (Exclusion from Gross Profits of Dividend of Surplus, etc. to be Received from Specified Foreign Subsidiary Company, etc.) of the Act on Special Measures Concerning Taxation)".

(Determination of Affiliated Foreign Companies)

- Article 39-20 (1) In the case referred to in Article 66-6, paragraph (1) of the Act, whether or not a foreign corporation falls under the category of an affiliated foreign company prescribed in paragraph (2), item (i) of the same Article (hereinafter referred to as an "Affiliated Foreign Company" in this paragraph and the following paragraph) is to be determined according to its status at the end of the relevant business year of the foreign corporation and whether or not a domestic corporation falls under the category of a corporation listed in the items of paragraph (1) of the same Article is determined according to its status at the end of the relevant business year of an Affiliated Foreign Company related to that corporation.
- (2) Where a domestic corporation listed in the items of Article 66-6, paragraph (1) of the Act has been dissolved through a merger by the day on which two months have elapsed after the final day of the relevant business year of an Affiliated Foreign Company related to the domestic corporation, the number of the shares, etc. of the Affiliated Foreign Company prescribed in paragraph (2), item (iii) of the same Article which were directly and indirectly held by the domestic corporation (hereinafter referred to as the "Number of Shares, etc. Directly and Indirectly Held" in this paragraph) and which have been succeeded to by the merging corporation pertaining to the merger is deemed to be the Number of Shares, etc. Directly and Indirectly Held by the merging corporation on the final day of the relevant business year of the Affiliated Foreign Company.
- (3) The amount included in the gross profits of a domestic corporation subject to

the provisions of Article 66-6, paragraph (1) of the Act, pursuant to the provisions of the same paragraph, is not to be included in the amount of income, etc. prescribed in the provisions of Article 67, paragraph (3) and paragraph (5) of the Corporation Tax Act for applying these provisions.

- (4) The amount included in the gross profits pursuant to the provisions of Article 66-6, paragraph (1) of the Act is not to be included in the amount of income prescribed in Article 9, paragraph (1), item (i), (a) of the Order for Enforcement of the Corporation Tax Act for calculating the amount of profit reserve of a domestic corporation subject to the provisions of Article 66-6, paragraph (1) of the Act.
- (5) The provisions of Article 14-10, paragraphs (1) to (5) and paragraphs (7) to (11) of the Order for Enforcement of the Corporation Tax Act apply mutatis mutandis where the provisions of Article 66-6, paragraph (7) of the Act apply under the provisions of the same Article (excluding paragraph (3), paragraph (4), and paragraph (6)) to Article 66-9 of the Act, Articles 39-14 to 39-16 (excluding paragraph (8)), and Article 39-18 to this Article.
- (6) With regard to a trust corporation or a beneficiary of a trust subject to corporation taxation prescribed in Article 4-7 of the Corporation Tax Act, beyond what is specified in the preceding paragraph, other necessary particulars concerning the application of the provisions of Article 66-6 (excluding paragraph (3), paragraph (4), and paragraph (6)) to Article 66-9 of the Act, Articles 39-14 to 39-16 (excluding paragraph (8)), or Article 39-18 to this Article are specified by Ministry of Finance Order.

#### **Section 8-5 Special Provisions for Taxation on Income of Specified Foreign Corporations Related to Domestic Corporations Who Are Specially-Related Shareholders**

(Scope of Specially-Related Shareholders)

Article 39-20-2 (1) An individual who has a special relationship specified by Cabinet Order prescribed in Article 66-9-2, paragraph (1) of the Act is any of the following:

- (i) an individual who has a special relationship prescribed in Article 4, paragraph (1) of the Order for Enforcement of the Corporation Tax Act with an individual falling under the category of a specified shareholder, etc. (meaning a specified shareholder, etc. prescribed in Article 66-9-2, paragraph (2), item (i) of the Act; hereinafter the same applies in the following item and item (i) of the following paragraph);
- (ii) an officer (meaning an officer prescribed in Article 2, item (xv) of the Corporation Tax Act; hereinafter the same applies in this paragraph and Article 39-20-4, paragraph (3)) of a corporation falling under the category of

- a specified shareholder, etc. and a person listed in the items of Article 72-3 of the Order for Enforcement of the Corporation Tax Act who is related to the officer (referred to as a "specially-related person" in the following item);
- (iii) an officer of a specially-related domestic corporation (meaning a specially-related domestic corporation prescribed in Article 66-9-2, paragraph (2), item (ii) of the Act; hereinafter the same applies in this Section) and a specially-related person who is related to the officer.
- (2) A corporation which has a special relationship specified by Cabinet Order prescribed in Article 66-9-2, paragraph (1) of the Act is any of the following:
- (i) where a specified shareholder, etc. (including an individual who has a special relationship with the specified shareholder, etc. as prescribed in item (i) or item (ii) of the preceding paragraph) or an individual who has a special relationship with a specially-related domestic corporation as prescribed in item (iii) of the same paragraph (hereinafter referred to as a "Determined Shareholder, etc." in this paragraph) controls any other corporation, the relevant other corporation;
  - (ii) where a Determined Shareholder, etc. and a corporation which has a special relationship with the Determined Shareholder, etc. as prescribed in the preceding item control any other corporation, the relevant other corporation;
  - (iii) where a Determined Shareholder, etc. and a corporation which has a special relationship with the Determined Shareholder, etc. as prescribed in the preceding two items control any other corporation, the relevant other corporation.
- (3) The provisions of Article 4, paragraph (3) and paragraph (4) of the Order for Enforcement of the Corporation Tax Act apply mutatis mutandis where the provisions of the preceding paragraph apply.
- (4) The relationship specified by Cabinet Order prescribed in Article 66-9-2, paragraph (1) of the Act is the relevant relationship in the case where a specially-related shareholder, etc. prescribed in the same paragraph (hereinafter referred to as a "Specially-Related Shareholder, etc." in this Section) and a specially-related domestic corporation have a relationship where the ratio of the shares, etc. indirectly held by the Specially-Related Shareholder, etc. pertaining to the specially-related domestic corporation (meaning the ratio specified respectively in the following items for the category of cases listed in the relevant items (where falling under both of the following cases, the sum of the ratios specified respectively as follows)) is 80 percent or more:
- (i) where out of the total number or total amount of shares or capital contributions issued by a foreign corporation (excluding that falling under the category of a Specially-Related Shareholder, etc.; hereinafter the same

- applies in this item) which is a shareholder, etc. (meaning a shareholder, etc. prescribed in Article 2, item (xiv) of the Corporation Tax Act; hereinafter the same applies in this Article) of a specially-related domestic corporation (the issued shares or capital contributions exclude those held on their own by the foreign corporation; and the total number or total amount of the issued shares or capital contributions is referred to as the "Issued Shares, etc." in this Section), a Specially-Related Shareholder, etc. holds 80 percent or more of the number or the amount of the shares, etc. (meaning shares or capital contributions; hereinafter the same applies in this Section): The ratio of the number or the amount of the shares, etc. of the specially-related domestic corporation held by the foreign corporation which is a shareholder, etc. out of the total Issued Shares, etc. of the specially-related domestic corporation (where there are two or more the foreign corporations which are shareholders, etc., the sum of the ratios calculated for each of them);
- (ii) where a single corporation or two or more corporations intervene between a corporation which is a shareholder, etc. of a specially-related domestic corporation (excluding a foreign corporation which is a shareholder, etc. set forth in the preceding item falling under the case listed in the same item and a corporation falling under the category of a Specially-Related Shareholder, etc.) and a Specially-Related Shareholder, etc., and have a linkage with them through holding the shares, etc. (where the corporation which is a shareholder, etc. is a domestic corporation and the relevant single corporation is or two or more corporations are all domestic corporations, excluding the domestic corporations and a corporation falling under the category of a Specially-Related Shareholder, etc.; hereinafter referred to as a "Capital Contribution-Related Corporation" in this item) (limited to the case where 80 percent or more of the number or the amount of the Issued Shares, etc. of each of a Capital Contribution-Related Corporation and the corporation which is a shareholder, etc. are held by a Specially-Related Shareholder, etc. or a Capital Contribution-Related Corporation (the Specially-Related Shareholder, etc. or capital contribution-related foreign corporation is limited to those 80 percent or more of the number or the amount of whose Issued Shares, etc. are held by a Specially-Related Shareholder, etc. or other Capital Contribution-Related Corporations)): The ratio of the number or the amount of the shares, etc. of a specially-related domestic corporation held by the corporation which is a shareholder, etc. out of the total Issued Shares, etc. of the specially-related domestic corporation (where there are two or more of those corporations which are shareholders, etc., the sum of the ratios calculated for each of them).
- (5) A foreign corporation specified by Cabinet Order prescribed in Article 66-9-2, paragraph (1) of the Act is any of the following:

- (i) a foreign corporation falling under the category of a foreign corporation which is a shareholder, etc. prescribed in item (i) of the preceding paragraph, where the ratio of the shares, etc. held indirectly as prescribed in the preceding paragraph is 80 percent or more;
  - (ii) a foreign corporation falling under the category of a foreign corporation which is a shareholder, etc. prescribed in item (ii) of the preceding paragraph and a foreign corporation falling under the category of a capital contribution-related corporation prescribed in the same item, where the ratio of the shares, etc. held indirectly as prescribed in the preceding paragraph is 80 percent or more;
  - (iii) a foreign corporation, over 50 percent of the number or the amount of whose Issued Shares, etc. are held directly or indirectly by a foreign corporation listed in the preceding two items (excluding a foreign corporation falling under the category of a foreign corporation listed in the preceding two items and a foreign corporation falling under the category of a Specially-Related Shareholder, etc.).
- (6) In item (iii) of the preceding paragraph, whether or not a foreign corporation directly or indirectly holds over 50 percent of the Issued Shares, etc. is to be determined based on the sum of the ratio of the shares, etc. held directly by a foreign corporation listed in item (i) and item (ii) of the same paragraph pertaining to any other foreign corporation (excluding a foreign corporation falling under the category of a foreign corporation listed in item (i) or item (ii) of the same paragraph and a foreign corporation falling under the category of a Specially-Related Shareholder, etc.; hereinafter the same applies in this paragraph) (the ratio of the shares, etc. held directly means the ratio of the number or the amount of the shares, etc. of any other foreign corporation held by a foreign corporation listed in item (i) and item (ii) of the preceding paragraph out of the total Issued Shares, etc. of the relevant other foreign corporation) and the ratio of the shares, etc. held indirectly by a foreign corporation listed in item (i) and item (ii) of the same paragraph pertaining to the relevant other foreign corporation (the ratio of the shares, etc. held indirectly means the ratio specified respectively in the following items for the category of cases listed in the relevant items (where falling under both of the following cases, the sum of the ratios specified respectively as follows)):
- (i) where a foreign corporation listed in item (i) and item (ii) of the preceding paragraph holds over 50 percent of the number or the amount of the Issued Shares, etc. of a foreign corporation which is a shareholder, etc. of the relevant other foreign corporation: The ratio of the number or the amount of the shares, etc. of the relevant other foreign corporation held by the foreign corporation which is a shareholder, etc. out of the total Issued Shares, etc. of the relevant other foreign corporation (where there are two or more of those

foreign corporations which are shareholders, etc., the sum of the ratios calculated for each of them);

- (ii) where a single foreign corporation or two or more foreign corporations intervene between a foreign corporation which is a shareholder, etc. of the relevant other foreign corporation (excluding a foreign corporation which is a shareholder, etc. set forth in the preceding item falling under the case listed in the same item) and a foreign corporation listed in item (i) and item (ii) of the preceding paragraph, and have a linkage with them through holding the shares, etc. (hereinafter referred to as a "Capital Contribution-Related Foreign Corporation" in this item) (limited to the case where over 50 percent of the number or the amount of the Issued Shares, etc. of each of a Capital Contribution-Related Foreign Corporation and the foreign corporation which is a shareholder, etc. are held by a foreign corporation listed in item (i) and item (ii) of the same paragraph or a Capital Contribution-Related Foreign Corporation (the foreign corporation or Capital Contribution-Related Foreign Corporation is limited to those over 50 percent of the number or the amount of whose Issued Shares, etc. are held by a foreign corporation listed in item (i) and item (ii) of the same paragraph or other capital contribution-related corporations)): The ratio of the number or the amount of the shares, etc. of the relevant other foreign corporation held by the foreign corporation which is a shareholder, etc. out of the total Issued Shares, etc. of the relevant other foreign corporation (where there are two or more of those foreign corporations which are shareholders, etc., the sum of the ratios calculated for each of them).
- (7) An affiliated foreign corporation specified by Cabinet Order prescribed in Article 66-9-2, paragraph (1) of the Act is any of the following:
  - (i) an affiliated foreign corporation (meaning an affiliated foreign corporation prescribed in Article 66-9-2, paragraph (1) of the Act; hereinafter the same applies in this Section) which has its head office or principal office in a state or territory where there are no taxes imposed on corporate income;
  - (ii) an affiliated foreign corporation whose tax imposed on its income for the relevant business year is 25 percent or less of the income.
- (8) The provisions of Article 39-14, paragraph (2) apply mutatis mutandis to the determination as to whether or not an affiliated foreign corporation falls under the category of an affiliated foreign corporation set forth in item (ii) of the preceding paragraph.
- (9) An individual who has a special relationship specified by Cabinet Order prescribed in Article 66-9-2, paragraph (2), item (i) of the Act is an individual who has a special relationship prescribed in Article 4, paragraph (1) of the Order for Enforcement of the Corporation Tax Act with a shareholder, etc. of a domestic corporation.

- (10) A corporation which has a special relationship specified by Cabinet Order prescribed in Article 66-9-2, paragraph (2), item (i) of the Act is any of the following:
- (i) where one of the shareholders, etc. of a domestic corporation (where the domestic corporation holds its own shares, etc., excluding the domestic corporation; hereinafter referred to as a "Determined Shareholder, etc." in this paragraph) (regarding a Determined Shareholder, etc. who is an individual, the Determined Shareholder, etc. and an individual who has a special relationship with the Determined Shareholder, etc. as prescribed in the preceding paragraph; hereinafter the same applies in this paragraph) controls any other corporation, the relevant other corporation;
  - (ii) where one of the Determined Shareholders, etc. and a corporation which has a special relationship with the Determined Shareholder, etc. as prescribed in the preceding item govern any other corporation, the relevant other corporation;
  - (iii) where one of the Determined Shareholders, etc. and a corporation which has a special relationship with the Determined Shareholder, etc. as prescribed in the preceding two items control any other corporation, the relevant other corporation.
- (11) The provisions of Article 4, paragraph (3) and paragraph (4) of the Order for Enforcement of the Corporation Tax Act apply mutatis mutandis where the provisions of the preceding paragraph apply.
- (12) A domestic corporation specified by Cabinet Order prescribed in Article 66-9-2, paragraph (2), item (ii) of the Act is a domestic corporation which has received the transfer of almost all the assets and liabilities of a specified domestic corporation prescribed in the same item immediately prior to a merger, split, transfer of business or for other reasons (hereinafter referred to as "Specified Reasons" in this paragraph) due to the Specified Reasons.

(Calculation of Amount of Eligible Income of Specified Foreign Corporations)

- Article 39-20-3 (1) The amount of undistributed income calculated in accordance with the standards specified by Cabinet Order prescribed in Article 66-9-2, paragraph (2), item (iii) of the Act is the amount calculated, pursuant to the provisions of Article 39-15, paragraph (1) or paragraph (2), or paragraph (3) of the same Article, with regard to the income of a specified foreign corporation prescribed in Article 66-9-6, paragraph (1) of the Act (hereinafter referred to as a "Specified Foreign Corporation" in this Article and paragraph (1) of the following Article) in its settlement of accounts for the relevant business year.
- (2) The amount obtained as a result of an adjustment for the amount of loss and base income prescribed in Article 66-9-2, paragraph (2), item (iii) of the Act is the amount that remains after deducting, from the base income amount,

prescribed in the same item, of a specified foreign subsidiary company, etc. for the relevant business year, the sum of the amounts listed as follows (where the provisions of paragraph (3) of the same Article are applied, the amount obtained by adding the amount that accounts for ten percent of the amount of expenses specified by Cabinet Order prescribed in Article 66-9-2, paragraph (2), item (iii) of the Act in which the terms and phrases are replaced pursuant to the provisions of paragraph (3) of the same Article):

- (i) the amount equivalent to the sum of the loss incurred in the business years that started within seven years prior to the first day of the relevant business year of the specified foreign subsidiary company, etc. (excluding the business years that started before October 1, 2007 and the business years during which the company did not fall under the category of specified foreign subsidiary companies, etc. (including specified foreign subsidiary companies, etc. prescribed in Article 40-7, paragraph (1) or Article 68-93-2, paragraph (1) of the Act)) (that loss excludes the amount deducted in the business years preceding the relevant business year pursuant to the provisions of this paragraph or Article 39-120-3, paragraph (2));
  - (ii) the amount of corporate income tax prescribed in Article 39-15, paragraph (1), item (ii) (hereinafter referred to as "Corporate Income Tax" in this item) that the specified foreign subsidiary company, etc. is to pay in the relevant business year (where there is any amount of Corporate Income Tax to be refunded in the relevant business year, the amount that remains after deducting the amount of Corporate Income Tax to be refunded).
- (3) A loss prescribed in item (i) of the preceding paragraph is a loss calculated with regard to the amount of income of a Specified Foreign Corporation in its settlement of accounts for the relevant business year, where the calculation has been made pursuant to the provisions of paragraph (1).
- (4) The provisions of Article 39-15, paragraphs (7) to (9) apply mutatis mutandis where the amount of income of a Specified Foreign Corporation in its settlement of accounts for the relevant business year is calculated pursuant to the provisions of paragraph (1) or paragraph (2) of the same Article.

(Calculation of the Amount of Taxable Income of Specified Foreign Corporations)

Article 39-20-4 (1) The amount calculated as specified by Cabinet Order prescribed in Article 66-9-2, paragraph (1) of the Act is the amount calculated with regard to the eligible income (meaning the eligible income prescribed in the same paragraph; hereinafter the same applies in this Section) for the relevant business year of a specified foreign corporation related to a domestic corporation which is a Specially-Related Shareholder, etc., pursuant to the provisions of Article 39-16, paragraph (1) and paragraph (2).



- (2) The provisions of Article 39-16, paragraph (3) apply mutatis mutandis to the number of shares or the amount of capital contributions of a foreign corporation specified by Cabinet Order as being held indirectly as prescribed in Article 66-9-2, paragraph (2), item (iv) of the Act. In this case, in Article 39-16, paragraph (3), item (i), the term "an individual" is deemed to be replaced with "a resident (meaning a resident prescribed in Article 2, paragraph (1), item (i)-2 of the Act; hereinafter the same applies in this paragraph)"; the term "the individual" is deemed to be replaced with "the resident"; and in item (ii) of the same paragraph, the term "an individual" is deemed to be replaced with "a resident"; and the term "the individual" is deemed to be replaced with "the resident".
- (3) The amount of expenses specified by Cabinet Order set forth in Article 66-9-2, paragraph (2), item (iii) of the Act in which the terms and phrases are replaced pursuant to the provisions of paragraph (3) of the same Article is the amount calculated with regard to the sum of personnel expenses for officers and employees of a specified foreign corporation engaged in the business of the specified foreign corporation prescribed in paragraph (3) of the same Article, pursuant to the provisions of Article 39-16, paragraph (8).

(Determination of Business of Specified Foreign Corporations)

Article 39-20-5 (1) The person specified by Cabinet Order prescribed in Article 66-9-2, paragraph (4), item (i) of the Act is any of the following:

- (i) other consolidated corporations which have the consolidated full controlling interest with a consolidated corporation falling under the category of a Specially-Related Shareholder, etc. which pertains to a specified foreign corporation prescribed in Article 66-9-2, paragraph (4), item (i) of the Act (hereinafter referred to as a "Specified Foreign Corporation" in this paragraph) mainly engaged in the business listed in item (i) of the same paragraph (the relevant other consolidated corporations exclude those falling under the category of Specially-Related Shareholders, etc. pertaining to the Specified Foreign Corporation);
- (ii) a person who holds over 50 percent of the number or the amount of the total Issued Shares, etc. of a corporation falling under the category of a Specially-Related Shareholder, etc. pertaining to a Specified Foreign Corporation mainly engaged in the business listed in Article 66-9-2, paragraph (4), item (i) of the Act (excluding a person falling under the category of a Specially-Related Shareholder, etc. pertaining to the Specified Foreign Corporation and a person falling under the category of persons listed in the preceding item);
- (iii) a person who holds over 50 percent of the number or the amount of the total Issued Shares, etc. of a consolidated corporation falling under the

- category of a Specially-Related Shareholder, etc. (where the consolidated corporation is a consolidated subsidiary corporation, a consolidated parent corporation related to the consolidated corporation) which pertains to a Specified Foreign Corporation mainly engaged in the business listed in Article 66-9-2, paragraph (4), item (i) of the Act (excluding a person falling under the category of a Specially-Related Shareholder, etc. pertaining to the Specified Foreign Corporation and a person falling under the category of persons listed in the preceding two items);
- (iv) an affiliated foreign corporation related to a Specially-Related Shareholder, etc. pertaining to a Specified Foreign Corporation mainly engaged in the business listed in Article 66-9-2, paragraph (4), item (i) of the Act;
  - (v) a corporation which is a shareholder, etc. prescribed in Article 39-20-2, paragraph (4), item (ii) or capital contribution-related corporation(s) which intervene(s) between a specially-related domestic corporation and a Specially-Related Shareholder, etc. pertaining to a Specified Foreign Corporation mainly engaged in the business listed in Article 66-9-2, paragraph (4), item (i) of the Act (excluding a person falling under the category of persons listed in item (i) or the preceding item);
  - (vi) a person who has a special relationship specified by Cabinet Order prescribed in Article 66-9-2, paragraph (1) of the Act with those listed as follows (excluding a person falling under the category of a specially-related domestic corporation pertaining to a specified foreign corporation mainly engaged in the business listed in Article 66-9-2, paragraph (4), item (i) of the Act, a person falling under the category of a Specially-Related Shareholder, etc. and a person falling under the category of persons listed in the preceding items):
    - (a) a specified foreign corporation mainly engaged in the business listed in Article 66-9-2, paragraph (4), item (i) of the Act;
    - (b) a specially-related domestic corporation pertaining to a specified foreign corporation mainly engaged in the business listed in Article 66-9-2, paragraph (4), item (i) of the Act;
    - (c) an individual or corporation falling under the category of a Specially-Related Shareholder, etc. pertaining to a specified foreign corporation mainly engaged in the business listed in Article 66-9-2, paragraph (4), item (i) of the Act;
    - (d) those listed in the preceding items.
- (2) The provisions of Article 39-17, paragraph (2) and paragraph (3) apply mutatis mutandis to the case specified by Cabinet Order prescribed in Article 66-9-2, paragraph (4), item (i) of the Act. In this case, the term "those listed in the items of Article 40-4, paragraph (1), items of Article 66-6, paragraph (1), items of Article 68-90, paragraph (1) of the Act and the preceding items" in

Article 39-17, paragraph (2), item (i) is deemed to be replaced with "a specially-related domestic corporation prescribed in Article 66-9-2, paragraph (2), item (ii) of the Act, Specially-Related Shareholder, etc. prescribed in paragraph (1) of the same Article and those listed in the items of Article 39-20-5, paragraph (1)".

- (3) The provisions of Article 39-17, paragraph (5) apply mutatis mutandis to the case specified by Cabinet Order prescribed in Article 66-9-2, paragraph (4), item (ii) of the Act.

(Calculation of Foreign Corporation Tax on Taxable Income of Specified Foreign Corporations)

Article 39-20-6 (1) The amount calculated as specified by Cabinet Order prescribed in Article 66-9-3, paragraph (1) of the Act is the amount calculated, pursuant to the provisions of Article 39-18, paragraph (1), with regard to 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 paragraph (3)) to be imposed on a specified foreign corporation prescribed in Article 66-9-7, paragraph (1) of the Act (referred to as a "Specified Foreign Corporation" in paragraph (3)) on its income for a business year containing eligible income.

- (2) In the case where the provisions of Article 69, paragraphs (1) to (12) of the Corporation Tax Act are applied by deeming the calculated amount to be the amount of creditable foreign corporation tax prescribed in paragraph (1) of the same Article payable by a domestic corporation that is a Specially-Related Shareholder, etc. pursuant to the provisions of Article 66-9-3, paragraph (1) of the Act, the particulars concerning the application of these provisions are as prescribed in the provisions of Article 39-18, paragraphs (2) to (10).

- (3) The business year specified by Cabinet Order prescribed in Article 66-9-3, paragraph (3) of the Act is the business year specified respectively in the items of Article 39-18, paragraph (3), in accordance with the category of the amount of foreign corporation tax imposed on the income of a Specified Foreign Corporation.

(Calculation of Specified Taxable Income of Specified Foreign Corporation)

Article 39-20-7 (1) The amount specified by Cabinet Order as prescribed in Article 66-9-4, paragraph (3), item (i) of the Act is the amount calculated in accordance with the provisions of Article 39-19, paragraph (1) with regard to the eligible income (limited to that which pertains to the taxable income prescribed in the same item that is included in gross profits in the calculation of the amount of income for the business year, prescribed in the same item, of a domestic corporation that is a Specially-Related Shareholder, etc.) pertaining

to a specified foreign corporation prescribed in the same item (referred to as a "Specified Foreign Corporation" in the following paragraph).

- (2) The amount specified by Cabinet Order as prescribed in Article 66-9-4, paragraph (3), item (ii) of the Act is the amount calculated in accordance with the provisions of Article 39-19, paragraph (2) with regard to the eligible income (limited to that which pertains to the taxable income prescribed in the same item that is included in gross profits in the calculation of the amount of income for each business year within the ten preceding years, prescribed in the same item, of a domestic corporation that is a Specially-Related Shareholder, etc.) for each business year of a Specified Foreign Corporation.
- (3) The particulars concerning the application of the provisions of Article 66-8, paragraphs (5) through (8) of the Act as applied mutatis mutandis pursuant to Article 66-9-4, paragraph (5) of the Act are as prescribed in the provisions of Article 39-19, paragraphs (3) through (6).
- (4) With regard to the application of the provisions of the Order for Enforcement of the Corporation Tax Act in the case where the provisions of Article 66-9-4, paragraph (1) of the Act apply, the phrase "(Exclusion from Gross Profits...) of the Act" in Article 9, paragraph (1), item (i), (c) of the same Order is deemed to be replaced with "(Exclusion from Gross Profits ...) of the Act or Article 66-9-4 (Exclusion from Gross Profits of Dividend of Surplus, etc. Received from Specified Foreign Corporation) of the Act on Special Measures Concerning Taxation)"
- (5) With regard to the application of the provisions of the Order for Enforcement of the Corporation Tax Act in the case where the provisions of the first sentence of Article 66-9-4, paragraph (2) apply, the phrase "(Exclusion of Gross Profit...) of the Act" in Article 9, paragraph (1), item (i), (c) of the same Order is deemed to be replaced with "(Exclusion of Gross Profit ...) of the Act (including the case where it is applied following the deemed replacement of terms pursuant to the provisions of the first sentence of Article 66-9-4, paragraph (2) (Exclusion from Gross Profits of Dividend of Surplus, etc. Received from Specified Foreign Corporation) of the Act on Special Measures Concerning Taxation)".

(Determination of Specified Relationship)

Article 39-20-8 (1) Where the provisions of Article 66-9-2, paragraph (1) of the Act apply, whether or not a domestic corporation falls under the category of a specified domestic corporation prescribed in Article 66-9-2, paragraph (2), item (i) of the Act is to be determined according to its status immediately before an event causing a specified relationship prescribed in paragraph (1) of the same Article occurred, and whether or not the specified relationship actually exists afterwards between a Specially-Related Shareholder, etc. and a specially-

related domestic corporation and whether or not a foreign corporation falls under the category of an affiliated foreign corporation is determined according to its status at the end of the relevant business year of the specially-related domestic corporation.

- (2) Where a foreign corporation has been determined as falling under the category of an affiliated foreign corporation at the end of the relevant business year of a specially-related domestic corporation, pursuant to the provisions of the preceding paragraph, the provisions of Article 66-9-2 of the Act apply to the eligible income for the relevant business year containing the day on which the affiliated foreign corporation (limited to that falling under the category of a specified foreign corporation prescribed in Article 66-9-6, paragraph (1) of the Act) was determined as falling under that category.
- (3) Where a domestic corporation which is a Specially-Related Shareholder, etc. pertaining to a specially-related domestic corporation has been dissolved through a merger by the day on which two months have elapsed after the final day of the relevant business year of an affiliated foreign corporation related to the domestic corporation, the number of the shares, etc. of the affiliated foreign corporation prescribed in Article 66-9-2, paragraph (2), item (iv) of the Act which were directly and indirectly held by the domestic corporation (hereinafter referred to as the "Number of Shares, etc. Directly and Indirectly Held" in this paragraph) and which have been transferred to the merging corporation pertaining to the merger (the merging corporation is limited to one falling under the category of a Specially-Related Shareholder, etc. related to the specially-related domestic corporation and one that proves to fall under the category of a Specially-Related Shareholder, etc. related to the specially-related domestic corporation by receiving the transfer of the number of the shares, etc. of the affiliated foreign corporation directly and indirectly held by the domestic corporation through the merger; hereinafter the same applies in this paragraph) is deemed to be the Number of Shares, etc. Directly and Indirectly Held by the merging corporation on the final day of the relevant business year of the affiliated foreign corporation.
- (4) The provisions of Article 39-20, paragraph (3) and paragraph (4) apply mutatis mutandis to the application of the provisions of Article 67, paragraph (3) and paragraph (5) of the Corporation Tax Act and the calculation of the amount of profit reserve of a domestic corporation which is a Specially-Related Shareholder, etc., where there is any amount included in the gross profits of the domestic corporation pursuant to the provisions of Article 66-9-2, paragraph (1) of the Act.
- (5) The provisions of Article 14-10, paragraphs (1) to (5) and paragraphs (7) to (11) of the Order for Enforcement of the Corporation Tax Act apply mutatis mutandis where the provisions of Article 66-9-2, paragraph (8) of the Act apply

under the provisions of the same Article (excluding paragraph (3), paragraph (4) and paragraph (6)) to Article 66-9-5 of the Act, Articles 39-20-2 to 39-20-4 (excluding paragraph (3)), and Article 39-20-6 to this Article.

- (6) With regard to a trust corporation or a beneficiary of a trust subject to corporation taxation prescribed in Article 4-7 of the Corporation Tax Act, beyond what is specified in the preceding paragraph, other necessary particulars concerning the application of the provisions of Article 66-9-2 (excluding paragraph (3), paragraph (4) and paragraph (6)) to Article 66-9-5 of the Act, Articles 39-20-2 to 39-20-4 (excluding paragraph (3)), or Article 39-20-6 to this Article are specified by Ministry of Finance Order.

### **Section 9 Other Special Provisions**

(Exclusion from Taxation of Interest on Deposits Settled in the Special International Financial Transactions Account)

Article 39-30 (1) The transaction specified by Cabinet Order as a bond transaction with a repurchase or resale agreement prescribed in Article 67-11, paragraph (1) of the Act is a bond transaction with a repurchase/resale agreement prescribed in Article 180, paragraph (4) of the Order for Enforcement of the Corporation Tax Act (referred to as a "bond transaction with a repurchase/resale agreement" in the following paragraph).

- (2) The margin specified by Cabinet Order as prescribed in Article 67-11, paragraph (1) of the Act is a margin equivalent to the amount calculated, in the case where in a bond transaction with a repurchase/resale agreement that a foreign corporation prescribed in the same paragraph conducts with a financial institution prescribed in the same paragraph and that has been settled in the special international financial transactions account, the value for purchasing bonds upon the purchase is less than the value for reselling bonds of the same type and the same quantity upon resale, by deducting the value for the purchase from the value for the resale.

- (3) The interest specified by Cabinet Order prescribed in Article 67-11, paragraph (1) of the Act is the interest to be received by a foreign corporation prescribed in the same paragraph which is attributed to a business that is conducted by the person in Japan at any fixed place prescribed in Article 141, item (i) of the Corporation Tax Act.

(Special Provisions for Taxation on Special Purpose Companies)

Article 39-32-2 (1)

- (10) With regard to the application of the provisions of Article 73, paragraph (2) and Article 77-2, paragraph (2) of the Order for Enforcement of the Corporation Tax Act to special purpose companies, the term "without applying the following

provisions" in these provisions is deemed to be replaced with "without applying the following provisions and the provisions of Article 67-14, paragraph (1) (Special Provisions for Taxation on Special Purpose Companies) of the Act on Special Measures Concerning Taxation".

(11) The amount of foreign corporation tax prescribed in Article 67-14, paragraph (4) of the Act that is to be credited under the same paragraph (hereinafter referred to as the "Amount of Creditable Foreign Corporation Tax" in this Article) is the sum of the amounts that remain after deducting, from the amounts specified in the following items for persons listed in the respective items, the amount of a dividend of profit (meaning the amount of a dividend of profit prescribed in Article 67-14, paragraph (1) of the Act; hereinafter the same applies in this Article) of a special purpose company pertaining to the Amount of Creditable Foreign Corporation Tax that these persons are to receive (where the sum of the amounts exceeds the amount of foreign corporation tax prescribed in Article 67-14, paragraph (4) of the Act that the special purpose company has paid, the amount of the paid foreign corporation tax):

(i) a resident prescribed in Article 2, paragraph (1), item (i)-2 of the Act: The amount obtained by dividing the amount of the dividend of profit that the resident is to receive by the rate that remains after deducting the tax rate prescribed in Article 182, item (ii) of the Income Tax Act from one;

(ii) a domestic corporation: The amount obtained by dividing the amount of the dividend of profit that the domestic corporation is to receive by the rate that remains after deducting the tax rate prescribed in Article 213, paragraph (2), item (ii) of the Income Tax Act from one;

(iii) a nonresident prescribed in Article 2, paragraph (1), item (i)-2 of the Act or a foreign corporation: The amount obtained by dividing the amount of the dividend of profit that the nonresident or foreign corporation is to receive by the rate that remains after deducting the tax rate prescribed in Article 213, paragraph (1), item (i) of the Income Tax Act from one.

(12) When a special purpose company collects income tax on the amount of a dividend of profit (limited to the amount pertaining to the business year for which it is to pay the Amount of Creditable Foreign Corporation Tax) pursuant to the provisions of Article 181 or Article 212 of the Income Tax Act, the Amount of Creditable Foreign Corporation Tax is to be credited against the amount of income tax that it is to collect and pay.

(13) Where the provisions of Article 67-14, paragraph (4) of the Act has applied to the amount of a dividend of profit of a special purpose company that an individual or a corporation is to receive, the Amount of Creditable Foreign Corporation Tax pertaining to the amount of dividend of profit is to be added to the amount of dividend of profit that these persons are to receive.

(14) A special purpose company, which was subject to the provisions of Article 67-14, paragraph (4) of the Act, must preserve a document certifying that the amount of foreign corporation tax prescribed in the same paragraph has been imposed and other documents specified by Ministry of Finance Order, as specified by Ministry of Finance Order.

(Special Provisions for Taxation on Investment Corporations)

Article 39-32-3 (1)

- (8) The requirements specified by Cabinet Order prescribed in Article 67-15, paragraph (1), item (ii), (e) of the Act are to be that an investment corporation has not borrowed funds from any person other than an institutional investor prescribed in item (i), (b), 2. of the same paragraph.
- (9) With regard to the application of the provisions of Article 73, paragraph (2) and Article 77-2, paragraph (2) of the Order for Enforcement of the Corporation Tax Act to investment corporations, the term "without applying the following provisions" in these provisions is deemed to be replaced with "without applying the following provisions and the provisions of Article 67-15, paragraph (1) (Special Provisions for Taxation on Investment Corporations) of the Act on Special Measures Concerning Taxation".
- (10) The amount of foreign corporation tax prescribed in Article 67-15, paragraph (5) of the Act that is to be credited under the same paragraph (hereinafter referred to as the "Amount of Creditable Foreign Corporation Tax" in this Article) is the sum of the amounts that remain after deducting, from the amount specified in the following items for persons listed in the respective items, the amount of a dividend, etc. (meaning the amount of a dividend, etc. prescribed in Article 67-15, paragraph (1) of the Act; hereinafter the same applies in this Article) of an investment corporation pertaining to the Amount of Creditable Foreign Corporation Tax that these persons are to receive (where the sum of the amounts exceeds the amount of foreign corporation tax prescribed in Article 67-15, paragraph (5) of the Act that the investment corporation has paid, the amount of the paid foreign corporation tax):
- (i) a resident prescribed in Article 2, paragraph (1), item (i)-2 of the Act: The amount obtained by dividing the amount of the dividend, etc. that the resident is to receive by the rate that remains after deducting the tax rate prescribed in Article 182, item (ii) of the Income Tax Act from one;
  - (ii) a domestic corporation: The amount obtained by dividing the amount of the dividend, etc. that the domestic corporation is to receive by the rate that remains after deducting the tax rate prescribed in Article 213, paragraph (2), item (ii) of the Income Tax Act from one;
  - (iii) a nonresident prescribed in Article 2, paragraph (1), item (i)-2 of the Act or a foreign corporation: The amount obtained by dividing the amount of the



dividend, etc. that the nonresident or foreign corporation is to receive by the rate that remains after deducting the tax rate prescribed in Article 213, paragraph (1), item (i) of the Income Tax Act from one.

- (11) When an investment corporation collects income tax on the amount of a dividend, etc. (limited to the amount pertaining to the business year for which it is to pay the Amount of Creditable Foreign Corporation Tax) pursuant to the provisions of Article 181 or Article 212 of the Income Tax Act, the Amount of Creditable Foreign Corporation Tax is to be credited against the amount of income tax that it is to collect and pay.
- (12) Where the provisions of Article 67-15, paragraph (5) of the Act have applied to the amount of a dividend, etc. of an investment corporation that an individual or a corporation is to receive, the Amount of Creditable Foreign Corporation Tax pertaining to the amount of a dividend, etc. is to be added to the amount of a dividend, etc. that these persons are to receive.
- (13) An investment corporation which was subject to the provisions of Article 67-15, paragraph (5) of the Act must preserve a document certifying that the amount of foreign corporation tax prescribed in the same paragraph has been imposed and other documents specified by Ministry of Finance Order, as specified by Ministry of Finance Order.

(Special Provisions for Taxation on Foreign Partners)

Article 39-33 (1) The foreign corporation prescribed in Article 67-16, paragraph (3) of the Act must submit the documents prescribed in the same paragraph to the competent district director of the a tax office having jurisdiction over the place for tax payment by the due date for filing a return form prescribed in the provisions of Article 74, paragraph (1) of the Corporation Tax Act as applied mutatis mutandis pursuant to Article 145, paragraph (1) of the same Act for the business year containing the day on which the foreign corporation has obtained any amount of income categorized as domestic source income prescribed in Article 67-16, paragraph (3) of the Act.

- (2) Where a foreign corporation which is a partner having concluded an investment partnership contract (meaning an investment partnership contract prescribed in Article 41-21, paragraph (2), item (i) of the Act; hereinafter the same applies in this Article and the following Article) and which has not satisfied the requirements listed in Article 41-21, paragraph (1), item (v) of the Act (hereinafter referred to as the "Item (v) Requirement" in this paragraph and the following paragraph) by the time of the conclusion of the investment partnership contract, comes to satisfy the Item (v) Requirement in respect of the investment partnership contract, with regard to the application of the provisions of Article 41-21, paragraph (3) of the Act as applied mutatis mutandis pursuant to Article 67-16, paragraph (2) of the Act in respect of the

investment partnership contract in the case where the foreign corporation satisfies the requirements listed in Article 41-21, paragraph (1), items (i) through (iv) continuously during the period from the day of the conclusion until the day on which the foreign corporation comes to satisfy the Item (v) Requirement, the phrase "the date of the conclusion of" in paragraph (3) of the same Article is deemed to be replaced with "the day on which the foreign corporation comes to satisfy the requirements listed in paragraph (1), item (v) in respect of"; and the phrase "items in paragraph (1)" in the same paragraph is deemed to be replaced with "items of the same paragraph".

- (3) Where a foreign corporation which is a partner having concluded two or more investment partnership contracts and which has not satisfied the Item (v) Requirement at the time of the conclusion of each investment partnership contract, would come to satisfy the Item (v) Requirement in respect of one of those two or more investment partnership contracts provided that the foreign corporation does not conduct a business in Japan based on an investment partnership contract(s) other than the relevant one of the two or more investment partnership contracts (hereinafter referred to as the "Other Investment Partnership Contract(s)" in this paragraph), with regard to the application of the provisions of Article 41-21, paragraph (3) of the Act as applied *mutatis mutandis* pursuant to Article 67-16, paragraph (2) of the Act to the relevant one investment partnership contract in the case where the foreign corporation satisfies the requirements listed in Article 41-21, paragraph (1), items (i) through (iv) of the Act in respect of each investment partnership contract continuously during the period from the date of conclusion until the day on which the foreign corporation comes to satisfy the Item (v) Requirement, the phrase "the date of the conclusion of" in paragraph (3) of the same Article is deemed to be replaced with "the day on which the foreign corporation comes to satisfy the requirements listed in paragraph (1), item (v) in respect of"; the phrase "items in paragraph (1)" in the same paragraph is deemed to be replaced with "items of the same paragraph"; and the phrase "on the date of the submission and thereafter" in the same paragraph is deemed to be replaced with "on the day on which the foreign corporation has submitted written applications for special provisions in respect of all of the investment partnership contracts concluded thereby, and thereafter".
- (4) Where a foreign corporation which seeks the application of the provisions of Article 67-16, paragraph (1) of the Act has submitted a written application for special provisions prescribed in Article 41-21, paragraph (3) of the Act pursuant to the provisions of the same paragraph or where a foreign corporation has submitted a written statement of change prescribed in paragraph (7) of the same Article pursuant to the provisions of the same paragraph, it is deemed that the foreign corporation has submitted a written

application for the special provisions prescribed in Article 41-21, paragraph (3) of the Act pursuant to the provisions of the same paragraph as applied mutatis mutandis pursuant to Article 67-16, paragraph (2) of the Act or a written statement of change prescribed in Article 41-21, paragraph (7) of the Act pursuant to the provisions of the same paragraph as applied mutatis mutandis pursuant to Article 67-16, paragraph (2) of the Act, respectively.

(Special Provisions for Taxable Income of Foreign Partner Having No Permanent Establishments)

Article 39-33-2 (1) Where a foreign corporation listed in Article 141, item (iv) of the Corporation Tax Act (hereinafter referred to as a "Foreign Corporation Having No Permanent Establishments in Japan" in this Article) has concluded an investment partnership contract subject to special provisions, etc. (meaning an investment partnership contract subject to special provisions (meaning an investment partnership contract subject to the provisions of Article 67-16, paragraph (1) of the Act, which is concluded by a foreign corporation which is subject to the provisions of the same paragraph; hereinafter the same applies in this paragraph) and an investment partnership contract (limited to the investment partnership contract in the case where the Foreign Corporation Having No Permanent Establishments in Japan satisfies the requirements listed in items (i) and (ii) in respect of an investment partnership contract other than an investment partnership contract subject to special provisions; hereinafter the same applies in this paragraph); hereinafter the same applies in this Article), when the foreign corporation has transferred shares of or capital contributions to a domestic corporation that satisfies the requirements listed in the items of Article 187, paragraph (6) of the Order for Enforcement of the Corporation Tax Act (including the case where the domestic corporation is deemed, pursuant to the provisions of paragraph (7) of the same Article, to have transferred shares or capital contributions prescribed in paragraph (6), item (ii) of the same Article that satisfies the requirements listed in the same item, and limited to the case where the foreign corporation satisfies the requirements listed in item (iii) in respect of the shares or capital contributions), with regard to the transfer of shares of or capital contributions to the domestic corporation, the provisions of Article 187 of the same Order apply by deeming that the person listed in paragraph (4), item (iii) of the same Article pertaining to the investment partnership contract subject to special provisions, etc. is not included in the scope of Specially-Related Shareholders, etc. prescribed in paragraph (6) and paragraph (7) of the same Article:

(i) for the period within the three years preceding or including the last day of the business year containing the date of transfer (hereinafter referred to as the "Business Year Containing the Date of Transfer" in this paragraph),

- during which the foreign corporation has been under an investment partnership contract, it has been a limited liability partner, prescribed in Article 41-21, paragraph (2), item (iii) of the Act, of an investment partnership, prescribed in item (ii) of the same paragraph, which is established by the investment partnership contract;
- (ii) for the period within the three years preceding or including the last day of the Business Year Containing the Date of Transfer, during which the foreign corporation has been under an investment partnership contract, it has not performed any act listed in the items of Article 26-30, paragraph (1) (including any act that the foreign corporation is deemed to have performed pursuant to the provisions of Article 26-30, paragraph (2) as applied mutatis mutandis pursuant to Article 26-31, paragraph (2)) pertaining to the business conducted under the investment partnership contract;
- (iii) at any time within the three years preceding or including the last day of the Business Year Containing the Date of Transfer, the Specially-Related Shareholder, etc. (excluding the person listed in Article 187, paragraph (4), item (iii) of the Order for Enforcement of the Corporation Tax Act pertaining to an investment partnership contract subject to special provisions, etc.) of a domestic corporation set forth in paragraph (1), item (iii), (b) of the same Article which pertains to the Foreign Corporation Having No Permanent Establishments in Japan, has not held shares or capital contribution that account for 25 percent or more of the total number or total amount of Issued Shares of or capital contributions to the domestic corporation (in the case where the Specially-Related Shareholder, etc. is a person listed in paragraph (4), item (iii) of the same Article pertaining to the partnership contract prescribed in the same item (excluding the investment partnership contract subject to special provisions, etc.), limited to those that are partnership property set forth in the same item).
- (2) Where a Foreign Corporation Having No Permanent Establishments in Japan has transferred shares of or capital contributions to a domestic corporation which are partnership property prescribed in Article 41-21, paragraph (2), item (iv) of the Act (hereinafter referred to as "Investment Partnership Property" in the following paragraph) pertaining to the investment partnership contract subject to special provisions, etc. concluded by the foreign corporation and which fall under the items of Article 26-31, paragraph (3), the provisions of the preceding paragraph do not apply.
- (3) The provisions of Article 26-31, paragraph (4) apply mutatis mutandis to the determination as to whether shares of or capital contributions to a domestic corporation which are Investment Partnership Property transferred by a Foreign Corporation Having No Permanent Establishments in Japan fall under the category of shares or capital contributions listed in paragraph (3), item (i)

of the same Article.

- (4) The provisions of Article 26-31, paragraph (5) apply mutatis mutandis where a Foreign Corporation Having No Permanent Establishments in Japan applies the provisions of paragraph (1). In this case, the phrase "their name and address (in the case of a Nonresident Having No Permanent Establishments in Japan who has a residence in Japan, their residence)" in paragraph (5) of the same Article is deemed to be replaced with "its name and the location of its head office or principal office"; and the phrase "March 15 of the year following the year containing the date of transfer" in the same paragraph is deemed to be replaced with "due date for filing a return form under the provisions of Article 74, paragraph (1) of the Corporation Tax Act as applied mutatis mutandis pursuant to Article 145, paragraph (1) of the same Act for the business year, prescribed in Article 2, paragraph (2), item (xix) of the Act, which contains the date of transfer".

(Interest on Foreign-Issued Company Bonds and Discount on Bonds to Which Special Provisions for Tax Exemption Are Not Applied)

Article 39-33-3 (1) The interest or discount on bonds specified by Cabinet Order prescribed in Article 67-17, paragraph (2) of the Act is the interest or discount on bonds listed as follows:

- (i) the interest or discount on bonds to be received by a foreign corporation listed in Article 141, item (i) of the Corporation Tax Act which is attributed to a business that is conducted by the person in Japan at any fixed place prescribed in the same item;
  - (ii) the interest or discount on bonds to be received by a foreign corporation listed in Article 141, item (ii) or item (iii) of the Corporation Tax Act which is attributed to the person's business prescribed in these items.
- (2) The profit from redemption specified by Cabinet Order as prescribed in Article 67-17, paragraph (3) of the Act is the profit from redemption listed as follows:
- (i) any profit from redemption as prescribed in Article 41-12, paragraph (7) of the Act (hereinafter referred to as "Profit for Redemption" in this paragraph) of discount bonds prescribed in paragraph (7) of the same Article (hereinafter referred to as "Discount Bonds" in this paragraph) issued by a foreign corporation listed in Article 141, item (i) of the Corporation Tax Act, which corresponds to the amount calculated by multiplying the amount of the Profit for Redemption by the rate prescribed in Article 26-9-2, paragraph (1), item (i) pertaining to the Discount Bonds;
  - (ii) any Profit for Redemption of Discount Bonds issued by a foreign corporation listed in Article 141, item (ii) or item (iii) of the Corporation Tax Act, which corresponds to the amount calculated by multiplying the amount

of the Profit for Redemption by the rate prescribed in Article 26-9-2, paragraph (1), item (ii) pertaining to the Discount Bonds.

(3) The profit from redemption specified by Cabinet Order prescribed in Article 67-17, paragraph (5) of the Act is the profit from the redemption listed as follows:

- (i) the profit from redemption prescribed in Article 41-12, paragraph (7) of the Act (referred to as "Profit for Redemption" in the following item) to be received by a foreign corporation listed in Article 141, item (i) of the Corporation Tax Act which is attributed to a business that is conducted by the person in Japan at any fixed place prescribed in Article 141, item (i) of the Corporation Tax Act;
- (ii) the profit from the redemption to be received by a foreign corporation listed in Article 141, item (ii) or item (iii) of the Corporation Tax Act which is attributed to the person's business prescribed in these items.

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

Article 39-33-4 The amount specified by Cabinet Order prescribed in Article 67-18, paragraph (2) of the Act is the amount specified respectively in the following items for the category of cases listed in the relevant items:

- (i) where a foreign corporation holds Book-Entry National Government Bonds in separate trading (meaning Book-Entry National Government Bonds in separate trading prescribed in Article 67-18, paragraph (1) of the Act; hereinafter the same applies in this Article) that falls under the category of securities for buying and selling prescribed in Article 61-3, paragraph (1), item (i) of the Corporation Tax Act at the end of a business year, and when any valuation loss prescribed in Article 61-3, paragraph (2) of the Corporation Tax Act has been incurred for the Book-Entry National Government Bonds in separate trading: The amount equivalent to the valuation loss;
- (ii) where a foreign corporation holds Book-Entry National Government Bonds in separate trading that falls under the category of securities for redemption prescribed in Article 119-14 of the Order for Enforcement of the Corporation Tax Act at the end of a business year, and when any adjusted loss prescribed in Article 139-2, paragraph (2) of the same Order has been incurred for the Book-Entry National Government Bonds in separate trading: The amount equivalent to the adjusted loss;
- (iii) where an event listed in Article 68, paragraph (1), item (ii), (a) of the Order for Enforcement of the Corporation Tax Act has occurred with regard to Book-Entry National Government Bonds in separate trading held by a foreign corporation, and when their book value has been reduced by

- reckoning the amount into expenses for accounting purposes through changes in the valuation of the Book-Entry National Government Bonds in separate trading pursuant to the provisions of Article 33, paragraph (2) of the Corporation Tax Act: The amount equivalent to the amount with the variance prescribed in the same paragraph as the upper limit;
- (iv) where a foreign corporation has transferred Book-Entry National Government Bonds in separate trading, and when any loss on the transfer prescribed in Article 61-2, paragraph (1) of the Corporation Tax Act has been incurred for the transfer of the Book-Entry National Government Bonds in separate trading: The amount equivalent to the loss on the transfer;
- (v) where, in a business year when a foreign corporation holds Book-Entry National Government Bonds in separate trading, the amount to be included in deductible expenses for calculating the amount of income for the relevant business year contains the amount of selling expenses, general administrative expenses and any other expenses prescribed in Article 22, paragraph (3), item (ii) of the Corporation Tax Act that arose in connection with both a business that creates income for the holding or transfer of Book-Entry National Government Bonds in separate trading and a business that creates income other than the income (hereinafter referred to as the "Amount of Common Expenses" in this item): The amount equivalent to the part of the Amount of Common Expenses that is to be appropriated as deductible expenses for calculating the amount of income for the holding or transfer of the Book-Entry National Government Bonds in separate trading, based on the amount of revenue, asset value, the number of employees, and any other standards that are deemed to be rational in light of the details of the business conducted by the foreign corporation and the nature of the expenses.

(Special Provisions Concerning the Scope of Qualified Merger)

Article 39-34-3 (1) The merger satisfying the requirements specified by Cabinet Order prescribed in Article 68-2-3, paragraph (1) of the Act is the merger that satisfies all of the following requirements:

- (i) any of the principal businesses conducted by a merged corporation before the merger and any of the businesses conducted by a merging corporation before the merger are interrelated;
- (ii) the sum of the amounts of sales, revenue and any other profits from the businesses conducted without interruption by a merging corporation before the merger does not fall below approximately half of the sum of the amounts from the businesses conducted without interruption by a merged corporation before the merger;
- (iii) the principal businesses conducted by a merging corporation before the merger do not fall under any of the following:

- (a) the holding of shares (including capital contributions; hereinafter the same applies in this Article) or bonds;
- (b) 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 those rights) or copyrights (including publication rights, neighboring rights and any other equivalent rights);
- (iv) before the merger, a merging corporation has an office, store, factory or any other fixed facility that is considered to be necessary for conducting its principal business in Japan, and takes charge of managing, controlling and operating the business on its own account;
- (v) the majority of specified officers (meaning specified officers prescribed in Article 4-2, paragraph (4), item (ii) of the Order for Enforcement of the Corporation Tax Act; hereinafter the same applies in this Article) of a merging corporation before the merger are not those listed as follows:
  - (a) persons who concurrently serve as officers (meaning officers as prescribed in Article 2, item (xv) of the Corporation Tax Act; hereinafter the same applies in this Article) or employees of a merged corporation or who used to serve as officers or employees of the merged corporation;
  - (b) persons who concurrently serve as officers or employees of a foreign parent corporation related to a merging corporation (meaning a corporation (limited to a foreign corporation) that has a relationship specified by Cabinet Order prescribed in Article 2, item (xii)-8 of the Corporation Tax Act; hereinafter the same applies in this item) or who used to serve as officers or employees of the foreign parent corporation;
  - (c) persons who have a special relationship prescribed in Article 4, paragraph (1) of the Order for Enforcement of the Corporation Tax Act with a person listed in (a) or (b).
- (2) The company split satisfying the requirements specified by Cabinet Order prescribed in Article 68-2-3, paragraph (2) of the Act is the company split that satisfies all of the following requirements:
  - (i) any of the businesses conducted by a split corporation before the company split, which is to be conducted by a succeeding corporation in the company split as a result of the company split, and any of the businesses conducted by the succeeding corporation in the company split before the company split are interrelated;
  - (ii) the sum of the amounts of sales, revenue and any other profits from the businesses conducted without interruption by a succeeding corporation in the company split before the company split does not fall below approximately half of the sum of the amounts from the businesses conducted without interruption by a split corporation before the company split;



- (iii) the principal businesses conducted by a succeeding corporation in the company split before the company split do not fall under any of the following:
  - (a) the holding of shares or bonds;
  - (b) 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 those rights) or copyrights (including publication rights, neighboring rights and any other equivalent rights);
- (iv) before the company split, a succeeding corporation in the company split has an office, store, factory or any other fixed facility that is considered to be necessary for conducting its principal business in Japan, and takes charge of managing, controlling and operating the business on its own account;
- (v) the majority of specified officers of a succeeding corporation in the company split before the company split are not those listed as follows:
  - (a) persons who concurrently serve as officers or employees of a split corporation or who used to serve as officers or employees of the split corporation;
  - (b) persons who concurrently serve as officers or employees of a foreign parent corporation related to a succeeding corporation in the company split (meaning a corporation (limited to a foreign corporation) that has a relationship specified by Cabinet Order prescribed in Article 2, item (xii)-11 of the Corporation Tax Act; hereinafter the same applies in this item) or who used to serve as officers or employees of the foreign parent corporation;
  - (c) persons who have a special relationship prescribed in Article 4, paragraph (1) of the Order for Enforcement of the Corporation Tax Act with a person listed in (a) or (b).
- (3) The company split specified by Cabinet Order prescribed in Article 68-2-3, paragraph (2), item (i) of the Act is the company split in which almost all of the assets and liabilities pertaining to a split corporation immediately prior to the company split are to be transferred to a succeeding corporation in the company split.
- (4) The share exchange satisfying the requirements specified by Cabinet Order prescribed in Article 68-2-3, paragraph (3) of the Act is the share exchange that satisfies all of the following requirements:
  - (i) any of the principal businesses conducted by a wholly owned subsidiary corporation in a share exchange before the share exchange and any of the businesses conducted by a fully controlling parent corporation in a share exchange before the share exchange are interrelated;
  - (ii) the sum of the amounts of sales, revenue and any other profits from the businesses conducted without interruption by a fully controlling parent

- corporation in a share exchange before the share exchange does not fall below approximately half of the sum of the amounts from the businesses conducted without interruption by a wholly owned subsidiary corporation in a share exchange before the share exchange;
- (iii) the principal businesses conducted by a fully controlling parent corporation in a share exchange before the share exchange do not fall under any of the following:
    - (a) the holding of shares or bonds;
    - (b) 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 those rights) or copyrights (including publication rights, neighboring rights and any other equivalent rights);
  - (iv) before the share exchange, a fully controlling parent corporation in a share exchange has an office, store, factory or any other fixed facility that is considered to be necessary for conducting its principal business in Japan, and takes charge of managing, controlling and operating the business on its own account;
  - (v) the majority of specified officers of a fully controlling parent corporation in a share exchange before the share exchange are not those listed as follows:
    - (a) persons who concurrently serve as officers or employees of a wholly owned subsidiary corporation in a share exchange or who used to serve as officers or employees of the wholly owned subsidiary corporation in a share exchange;
    - (b) persons who concurrently serve as officers or employees of a foreign parent corporation related to a fully controlling parent corporation in a share exchange (meaning a corporation (limited to a foreign corporation) that has a relationship specified by Cabinet Order prescribed in Article 2, item (xii)-16 of the Corporation Tax Act; hereinafter the same applies in this item) or who used to serve as officers or employees of the foreign parent corporation;
    - (c) persons who have a special relationship prescribed in Article 4, paragraph (1) of the Order for Enforcement of the Corporation Tax Act with a person listed in (a) or (b).
- (5) The foreign corporation specified by Cabinet Order prescribed in Article 68-2-3, paragraph (5), item (i) of the Act is that listed as follows:
- (i) a foreign corporation that has its head office or principal office in a state or territory where there are no taxes imposed on corporate income;
  - (ii) a foreign corporation, in any of the business years that started within two years prior to the first day of the business year of the foreign corporation including the date of a merger, company split, share exchange, or capital

contribution in kind set forth in Article 68-2-3, paragraphs (1) to (4) of the Act, whose tax imposed on its income for the relevant business year was 25 percent or less of the income.

- (6) The provisions of Article 39-14, paragraph (2) apply mutatis mutandis to the determination as to whether or not a foreign corporation falls under the category of a foreign corporation set forth in item (ii) of the preceding paragraph.
- (7) A foreign corporation that satisfies all of the following requirements is not to be included in the category of foreign corporations listed in the items of paragraph (5):
- (i) a corporation's principal businesses do not fall under any of the categories of the holding of shares 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 those rights) or copyrights (including publication rights, neighboring rights and any other equivalent rights), or the lending of vessels or aircraft;
  - (ii) a corporation 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 on its own account;
  - (iii) in any of the business years that started within two years prior to the first day of the business year of the foreign corporation including the date of a merger, company split, share exchange, or capital contribution in kind set forth in Article 68-2-3, paragraphs (1) to (4) of the Act (hereinafter that business year is referred to as a "business year(s) within the preceding two years" in this item), the foreign corporation falls under any of the cases specified respectively as follows for the category of its principal businesses listed as follows:
    - (a) wholesale business, banking business, trust business, financial instruments business, insurance business, water transportation business or air transportation business: The cases specified respectively as follows for the category of its principal businesses listed as follows:
      1. wholesale business: where, out of the total revenue from selling inventory assets for any of the business years within the preceding two years (where there are any commissions to be received for agent or intermediary services for the buying or selling of inventory assets, the revenues include the amount from the transactions for which the commissions were generated; hereinafter referred to as the "Amount of Sales Transactions" in this item), the ratio of the sum of the Amount of Sales Transactions with a person other than affiliated persons exceeds

- 50 percent, or out of the sum of the acquisition costs for acquiring inventory assets for any of the business years within the preceding two years (where there are any commissions to be received for agent or intermediary services for the buying or selling of inventory assets, the acquisition costs include the amount from the transactions for which the commissions were generated; hereinafter referred to as the "Amount of Purchase Transactions" in this item), the ratio of the sum of the Amount of Purchase Transactions with a person other than affiliated persons exceeds 50 percent;
2. banking business: where, out of the sum of the total interest received for any of the business years within the preceding two years, the ratio of the sum of the interest to be received from a person other than affiliated persons exceeds 50 percent, or out of the sum of the total interest paid for any of the business years within the preceding two years, the ratio of the sum of the interest to be paid to a person other than affiliated persons exceeds 50 percent;
  3. trust business: where, out of the sum of the total trust charge for any of the business years within the preceding two years, the ratio of the sum of the trust charge to be received from a person other than affiliated persons exceeds 50 percent;
  4. financial instruments business: where, out of the sum of the total commissions received (including profits from the buying and selling of securities) for any of the business years within the preceding two years, the ratio of the sum of the commissions to be received from a person other than affiliated persons exceeds 50 percent;
  5. insurance business: where, out of the sum of the total premium income for any of the business years within the preceding two years, the ratio of the sum of the premium income to be received from a person other than affiliated persons (where the premium income pertains to reinsurance, limited to premium income from insurance for assets held by a person other than affiliated persons or damages incurred by a person other than affiliated persons) exceeds 50 percent;
  6. water transportation business or air transportation business: where, out of the total revenue from the operation or rental of vessels or operation or rental of aircrafts for any of the business years within the preceding two years, the ratio of the sum of the revenue to be received from a person other than affiliated persons exceeds 50 percent;
- (b) business other than those listed in (a): the cases specified respectively as follows for the category of its principal businesses listed as follows:
1. real estate business: where conducting a buying and selling or rental business of real estate (including acts to let others use the real estate)

(real estate includes the rights thereon; hereinafter the same applies in this item) mainly located in the state of the head office (meaning a state or territory where the head office or principal office is located; hereinafter the same applies in this item), providing agent or intermediary services for the buying and selling or rental business of the real estate, and managing the real estate;

2. rental and leasing business: where conducting a rental business for goods to be provided for use mainly in the state of the head office;
  3. business other than those listed in (a) and in 1. and 2.: where conducting a business mainly in the state of the head office.
- (8) Where transactions between a foreign corporation and an affiliated person related to the foreign corporation are conducted indirectly via a person other than an affiliated person related to the foreign corporation (hereinafter referred to as a "Non-Affiliated Person" in this paragraph), transactions between the foreign corporation and the Non-Affiliated Person are deemed to have been conducted directly between the foreign corporation and the affiliated person and the provisions of item (iii), (a) of the preceding paragraph are applied, except in the case where there are justifiable grounds for having the Non-Affiliated Person intervene in the transactions.
- (9) The affiliated person prescribed in paragraph (7), item (iii), (a) and the preceding paragraph is that listed as follows:
- (i) when there is a relationship between a foreign corporation and any other corporation whereby either of them directly or indirectly holds over 50 percent of the total number or total amount of the other corporation's issued shares or capital contributions (excluding the own shares held by either of the corporations; hereinafter referred to as the "Issued Shares, etc." in this Article), the relevant other corporation (excluding a corporation falling under the category of persons listed in the following item);
  - (ii) when there is a relationship whereby over 50 percent of the total number or total amount of the Issued Shares, etc. of a foreign corporation and any other corporation are respectively held directly or indirectly by the same person (where the person is an individual, the individual and an individual who has a special relationship prescribed in Article 4, paragraph (1) of the Order for Enforcement of the Corporation Tax Act with the individual), the relevant other corporation.
- (10) The relationship specified by Cabinet Order prescribed in Article 68-2-3, paragraph (5), item (ii) of the Act is the relationship listed as follows:
- (i) when there is a relationship whereby either of two domestic corporations directly or indirectly holds over 50 percent of the total number or total amount of the other domestic corporation's Issued Shares, etc., the relationship (excluding relationships falling under the category of

- relationships listed in the following item);
- (ii) when there is a relationship whereby over 50 percent of the total number or total amount of the Issued Shares, etc. of two domestic corporations are respectively held directly or indirectly by the same person (where the person is an individual, the individual and an individual who has a special relationship prescribed in Article 4, paragraph (1) of the Order for Enforcement of the Corporation Tax Act with the individual), the relationship between those two domestic corporations.
- (11) Whether or not there is any relationship listed in the items of the preceding paragraph is determined according to its status immediately prior to a merger, company split or share exchange set forth in Article 68-2-3, paragraphs (1) to (3) of the Act.
- (12) The provisions of Article 39-12, paragraph (2) and paragraph (3) apply *mutatis mutandis* where the provisions of paragraph (9) or paragraph (10) apply. In this case the term "50 percent or more" in paragraph (2) and paragraph (3) of the same Article is deemed to be replaced with "over 50 percent".
- (13) A nonresident who has a special relationship specified by Cabinet Order prescribed in Article 68-2-3, paragraph (5), item (iii) of the Act is a nonresident prescribed in Article 2, paragraph (1), item (i)-2 of the Act who has a special relationship prescribed in Article 39-14, paragraph (3) with a resident or domestic corporation prescribed in the same item.
- (14) The relationship specified by Cabinet Order prescribed in Article 68-2-3, paragraph (5), item (iv) of the Act is the relationship listed as follows:
- (i) when there is a relationship between a foreign corporation and a domestic corporation whereby the foreign corporation directly or indirectly holds 80 percent or more of the total number or total amount of the domestic corporation's Issued Shares, etc., the relationship (excluding relationships falling under the category of relationships listed in the following item);
  - (ii) when there is a relationship whereby 80 percent or more of the total number or total amount of the Issued Shares, etc. of a foreign corporation and a domestic corporation are respectively held directly or indirectly by the same person (where the person is an individual, the individual and an individual who has a special relationship prescribed in Article 4, paragraph (1) of the Order for Enforcement of the Corporation Tax Act with the individual), the relationship between the foreign corporation and domestic corporation.
- (15) The provisions of Article 39-12, paragraph (2) and paragraph (3) apply *mutatis mutandis* where the provisions of the preceding paragraph apply. In this case the term "50 percent or more" in paragraph (2) and paragraph (3) of the same Article is replaced with "80 percent or more".

(16) Particulars concerning the determination as to whether or not the merger, company split or share exchange satisfies the requirements listed in the items of paragraph (1), the items of paragraph (2) or the items of paragraph (3) and any other particulars necessary for the application of the provisions of the preceding items are specified by Ministry of Finance Order.

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

Article 39-35 (1) The provisions of Article 119-7-2, paragraph (1) of the Order for Enforcement of the Corporation Tax Act apply mutatis mutandis to the relationship specified by Cabinet Order prescribed in Article 68-3, paragraph (1) of the Act; and the provisions of Article 119-7-2, paragraph (3) of the same Order apply mutatis mutandis to the relationship specified by Cabinet Order prescribed in Article 68-3, paragraph (3) of the Act, respectively.

(2) Where a corporation has, as a result of a merger (limited to a merger that does not fall under the category of a 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 specified by Cabinet Order prescribed in Article 68-3, paragraph (1) of the Act, when 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 Article 68-2-3, paragraph (5), item (i) of the Act; hereinafter the same applies in paragraph (4)), the provisions of Article 119, paragraph (1), item (v) of the Order for Enforcement of the Corporation Tax Act (including the cases where it is applicable to the calculation made pursuant to the provisions of Article 142 of the Corporation Tax Act) do not apply to the acquisition costs of the provided shares.

(3) Where a corporation has, as a result of a specified split-off-type company split prescribed in Article 68-3, paragraph (2) of the Act which was 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 specified foreign parent corporation prescribed in the same paragraph, the provisions of Article 119, paragraph (1), item (vi) of the Order for Enforcement of the Corporation Tax Act (including the cases where it is applicable to the calculation made pursuant to the provisions of Article 142 of the Corporation Tax Act) do not apply to the acquisition costs of the provided shares.

(4) Where a corporation has, as a result of a share exchange (limited to a share exchange that does not fall under the category of a 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 specified by Cabinet Order prescribed in Article 68-3, paragraph (3) of the Act, when the shares of the foreign corporation are shares of a specified foreign corporation with less tax burden, the provisions of Article 119, paragraph (1), item (viii) of the Order for Enforcement of the Corporation Tax Act (including the cases where it is applicable to the calculation made pursuant to the provisions of Article 142 of the Corporation Tax Act) do not apply to the acquisition costs of the provided shares.

- (5) Where a foreign corporation has, as a result of a specified split-off-type company split prescribed in Article 68-3, paragraph (2) of the Act which was 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 specified foreign parent corporation prescribed in the same paragraph, the provisions of Article 188, paragraph (1), item (xvii) of the Order for Enforcement of the Corporation Tax Act do not apply to the calculation made, with regard to the amount of the foreign corporation's income categorized as domestic source income prescribed in Article 142 of the Corporation Tax Act, in accordance with the provisions of Article 61-2, paragraph (4) of the same Act in which the terms and phrases are replaced pursuant to the provisions of the same paragraph.

(Special Provisions for Taxation on Trust Corporations for Special Purpose Trusts)

Article 39-35-2 (1)

- (8) With regard to the application of the provisions of Article 73, paragraph (2) and Article 77-2, paragraph (2) of the Order for Enforcement of the Corporation Tax Act in the case where the provisions of Article 68-3-2, paragraph (1) of the Act apply, the term "without applying the following provisions" in these provisions is deemed to be replaced with "without applying the following provisions and the provisions of Article 68-3-2, paragraph (1) (Special Provisions for Taxation on Trust Corporations for Special Purpose Trusts) of the Act on Special Measures Concerning Taxation".
- (9) The provisions of paragraph (1) to the preceding paragraph apply mutatis mutandis when applying the provisions of Article 68-3-2, paragraphs (1) to (3), paragraph (7) and paragraph (8) of the Act which apply mutatis mutandis pursuant to paragraph (9) of the same Article. In this case, the terms listed in the middle column of the following table which are used in the provisions listed in the left-hand column of the same table are deemed to be replaced with the terms listed in the right-hand column of the same table.



Paragraph (2)	calculated without applying the provisions of the same paragraph and Article 57, paragraph (1), Article 58, paragraph (1) and Article 59, paragraph (2) of the Corporation Tax Act	calculated without applying the provisions of Article 57, paragraph (1), Article 58, paragraph (1) and Article 59, paragraph (2) of the Corporation Tax Act in the case where the calculation is made, with regard to the income categorized as domestic source income prescribed in Article 141 of the same Act, in accordance with these provisions, pursuant to the provisions of Article 68-3-2, paragraph (1) of the Act and Article 142 of the Corporation Tax Act
	income for the relevant business year	income categorized as domestic source income
Paragraph (4)	the same paragraph	Article 68-3-2, paragraph (9) of the Act
The preceding paragraph	With regard to the application of the provisions of Article 73, paragraph (2) and Article 77-2, paragraph (2) of the Order for Enforcement of the Corporation Tax Act in the case where the provisions of Article 68-3-2, paragraph (1) applies	In the case where the provisions of Article 68-3-2, paragraph (1) applies and where calculation is to be made, in accordance with the provisions of Article 73, paragraph (2) and Article 77-2, paragraph (2) of the Order for Enforcement of the Corporation Tax Act, with regard to income categorized as domestic source income prescribed in Article 141 of the Corporation Tax Act under Article 142 of the same Act, with regard to the application of these provisions
	Article 68-3-2, paragraph (1) (Special Provisions for Taxation on Trust Corporations for Special Purpose Trusts)	paragraph (1) of the same Article which is applied mutatis mutandis pursuant to Article 68-3-2, paragraph (9) (Special Provisions for Taxation on Trust Corporations for Special Purpose Trusts)

(10) The amount of foreign corporation tax prescribed in Article 68-3-2,

paragraph (4) of the Act that is to be credited under the same paragraph (hereinafter referred to as the "Amount of Creditable Foreign Corporation Tax" in this Article) is the sum of the amounts that remain after deducting, from the amounts specified in the following items for the persons listed in the respective items, the amount of a distribution of profit (meaning the amount of a distribution of profit prescribed in Article 68-3-2, paragraph (1) of the Act; hereinafter the same applies in this Article) of special purpose trusts pertaining to the Amount of Creditable Foreign Corporation Tax that these persons are to receive (where the sum of the amounts exceeds the amount of foreign corporation tax prescribed in Article 68-3-2, paragraph (4) of the Act that a trust corporation for special purpose trusts has paid, the amount of the paid foreign corporation tax):

- (i) a resident prescribed in Article 2, paragraph (1), item (i)-2 of the Act: The amount obtained by dividing the amount of the distribution of profit that the resident is to receive by the rate that remains after deducting the tax rate prescribed in Article 182, item (ii) of the Income Tax Act from one;
  - (ii) a domestic corporation: The amount obtained by dividing the amount of the distribution of profit that the domestic corporation is to receive by the rate that remains after deducting the tax rate prescribed in Article 213, paragraph (2), item (ii) of the Income Tax Act from one;
  - (iii) a nonresident prescribed in Article 2, paragraph (1), item (i)-2 of the Act or a foreign corporation: The amount obtained by dividing the amount of the distribution of profit that the nonresident or foreign corporation is to receive by the rate that remains after deducting the tax rate prescribed in Article 213, paragraph (1), item (i) of the Income Tax Act from one.
- (11) When a trust corporation for special purpose trusts collects income tax on the amount of a distribution of profit (limited to the amount pertaining to the business year for which it is to pay the Amount of Creditable Foreign Corporation Tax) pursuant to the provisions of Article 181 or Article 212 of the Income Tax Act, the Amount of Creditable Foreign Corporation Tax is to be credited against the amount of income tax that it is to collect and pay.
- (12) Where the provisions of Article 68-3-2, paragraph (4) of the Act have applied to the amount of a distribution of profit of special purpose trusts that an individual or a corporation is to receive, the Amount of Creditable Foreign Corporation Tax pertaining to the amount of distribution of profit is to be added to the amount of distribution of profit that these persons are to receive.
- (13) A trust corporation for special purpose trusts, which was subject to the provisions of Article 68-3-2, paragraph (4) of the Act, must preserve a document certifying that the amount of foreign corporation tax prescribed in the same paragraph has been imposed and other documents specified by Ministry of Finance Order, as specified by Ministry of Finance Order.

(14) With regard to the application of the provisions of Article 68-3-2, paragraph (10) of the Act in the case where the amount of the distribution of profit from a foreign special purpose trust prescribed in Article 68-3-2, paragraph (10) of the Act is received from a specified foreign subsidiary company, etc. prescribed in Article 66-6, paragraph (1) of the Act (limited to the one that falls under the category of foreign subsidiary company prescribed in Article 23-2, paragraph (1) of the Corporation Tax Act) or a specified foreign corporation prescribed in Article 66-9-2, paragraph (1) of the Act (limited to the one that falls under the category of foreign subsidiary company prescribed in Article 23-2, paragraph (1) of the Corporation Tax Act), in Article 68-3-2, paragraph (10) of the Act, the phrase "referred to in the following paragraph" is deemed to be replaced with "hereinafter referred to in this paragraph and the following paragraph", and the phrase "as "amount of the distribution of profit from a foreign special purpose trust") is deemed to be excluded .... prescribed in Article 23-2, paragraph (1) of the Corporation Tax Act" is deemed to be replaced with "as "amount of the distribution of profit from a foreign special purpose trust") (excluding the amount of the distribution of profit from a foreign special purpose trust to be received from a specified foreign subsidiary company, etc. prescribed in Article 66-6, paragraph (1) (limited to the one that falls under the category of foreign subsidiary company prescribed in Article 23-2, paragraph (1) of the Corporation Tax Act) or a specified foreign corporation prescribed in Article 66-9-2, paragraph (1) (limited to the one that falls under the category of foreign subsidiary company prescribed in Article 23-2, paragraph (1) of the same Act) (limited to the amount up to the specified taxable income prescribed in Article 66-8, paragraph (3) or the amount up to the specified taxable income prescribed in Article 66-9-4, paragraph (3))) is deemed to be excluded .... prescribed in Article 23-2, paragraph (1) of the same Act".

(Special Provisions for Taxation on Trust Corporations for Special Investment Trusts)

Article 39-35-3 (1)

(7) With regard to the application of the provisions of Article 73, paragraph (2) and Article 77-2, paragraph (2) of the Order for Enforcement of the Corporation Tax Act in the case where the provisions of Article 68-3-3, paragraph (1) of the Act apply, the term "without applying the following provisions" in these provisions is deemed to be replaced with "without applying the following provisions and the provisions of Article 68-3-3, paragraph (1) (Special Provisions for Taxation on Trust Corporations of Special Investment Trusts) of the Act on Special Measures Concerning Taxation".

(8) The provisions of paragraph (1) to the preceding paragraph apply mutatis mutandis when applying the provisions of Article 68-3-3, paragraphs (1) to (3),

paragraph (7) and paragraph (8) of the Act which apply mutatis mutandis pursuant to paragraph (9) of the same Article. In this case, the terms listed in the middle column of the following table which are used in the provisions listed in the left-hand column of the same table is deemed to be replaced with the terms listed in the right-hand column of the same table.

Paragraph (1)	trust corporation prescribed in Article 68-3-3, paragraph (1) of the Act	trust corporation prescribed in Article 68-3-3, paragraph (9) of the Act
Paragraph (2)	calculated without applying the provisions of the same paragraph and Article 57, paragraph (1), Article 58, paragraph (1) and Article 59, paragraph (2) of the Corporation Tax Act	calculated without applying the provisions of Article 57, paragraph (1), Article 58, paragraph (1) and Article 59, paragraph (2) of the Corporation Tax Act in the case where the calculation is made, with regard to the income categorized as domestic source income prescribed in Article 141 of the same Act, in accordance with these provisions, pursuant to the provisions of Article 68-3-2, paragraph (1) of the Act and Article 142 of the Corporation Tax Act
	income for the relevant business year	income categorized as domestic source income
The preceding paragraph	With regard to the application of the provisions of Article 73, paragraph (2) and Article 77-2, paragraph (2) of the Order for Enforcement of the Corporation Tax Act in the case where the provisions of Article 68-3-2, paragraph (1) applies	In the case where the provisions of Article 68-3-2, paragraph (1) applies and where calculation is to be made, in accordance with the provisions of Article 73, paragraph (2) and Article 77-2, paragraph (2) of the Order for Enforcement of the Corporation Tax Act, with regard to income categorized as domestic source income prescribed in Article 141 of the Corporation Tax Act under Article 142 of the same Act, with regard to the application of these provisions

	Article 68-3-3, paragraph (1) (Special Provisions for Taxation on Trust Corporations for Special Investment Trusts)	paragraph (1) of the same Article which is applied mutatis mutandis pursuant to Article 68-3-3, paragraph (9) (Special Provisions for Taxation on Trust Corporations for Special Investment Trusts)
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- (9) The amount of foreign corporation tax prescribed in Article 68-3-3, paragraph (4) of the Act that is to be credited under the same paragraph (hereinafter referred to as the "Amount of Creditable Foreign Corporation Tax" in this Article) is the sum of the amounts that remain after deducting, from the amount specified respectively in the following items for persons listed in the relevant items, the amount of a distribution of proceeds (meaning the amount of a distribution of proceeds prescribed in Article 68-3-3, paragraph (1) of the Act; hereinafter the same applies in this Article) of special investment trusts pertaining to the Amount of Creditable Foreign Corporation Tax that these persons are to receive (where the sum of the amounts exceeds the amount of foreign corporation tax prescribed in Article 68-3-3, paragraph (4) of the Act that a trust corporation for special investment trusts has paid, the amount of the paid foreign corporation tax):
- (i) a resident prescribed in Article 2, paragraph (1), item (i)-2 of the Act: The amount obtained by dividing the amount of the distribution of proceeds that the resident is to receive by the rate that remains after deducting the tax rate prescribed in Article 182, item (ii) of the Income Tax Act from one;
  - (ii) a domestic corporation: The amount obtained by dividing the amount of the distribution of proceeds that the domestic corporation is to receive by the rate that remains after deducting the tax rate prescribed in Article 213, paragraph (2), item (ii) of the Income Tax Act from one;
  - (iii) a nonresident prescribed in Article 2, paragraph (1), item (i)-2 of the Act or a foreign corporation: The amount obtained by dividing the amount of the distribution of proceeds that the nonresident or foreign corporation is to receive by the rate that remains after deducting the tax rate prescribed in Article 213, paragraph (1), item (i) of the Income Tax Act from one.
- (10) When a trust corporation for special investment trusts collects income tax on the amount of a distribution of proceeds (limited to the amount pertaining to the business year for which it is to pay the Amount of Creditable Foreign Corporation Tax) pursuant to the provisions of Article 181 or Article 212 of the Income Tax Act, the Amount of Creditable Foreign Corporation Tax is to be credited against the amount of income tax that it is to collect and pay.
- (11) Where the provisions of Article 68-3-3, paragraph (4) of the Act has applied

to the amount of a distribution of proceeds of special investment trusts that an individual or a corporation is to receive, the Amount of Creditable Foreign Corporation Tax pertaining to the amount of distribution of proceeds is to be added to the amount of distribution of proceeds that these persons are to receive.

- (12) A trust corporation for special investment trusts, which was subject to the provisions of Article 68-3-3, paragraph (4) of the Act, must preserve a document certifying that the amount of foreign corporation tax prescribed in the same paragraph has been imposed and other documents specified by Ministry of Finance Order, as specified by Ministry of Finance Order.
- (13) With regard to the application of the provisions of Article 68-3-3, paragraph (10) of the Act in the case where the amount of the distribution of profit from a foreign special investment trust prescribed in Article 68-3-3, paragraph (10) of the Act is received from a specified foreign subsidiary company, etc. prescribed in Article 66-6, paragraph (1) of the Act (limited to the one that falls under the category of foreign subsidiary company prescribed in Article 23-2, paragraph (1) of the Corporation Tax Act) or a specified foreign corporation prescribed in Article 66-9-2, paragraph (1) of the Act (limited to the one that falls under the category of foreign subsidiary company prescribed in Article 23-2, paragraph (1) of the Corporation Tax Act), in Article 68-3-3, paragraph (10) of the Act, the phrase "referred to in the following paragraph" is deemed to be replaced with "hereinafter referred to in this paragraph and the following paragraph", and the phrase "as "amount of the distribution of profit from a foreign special investment trust" is deemed to be excluded .... prescribed in Article 23-2, paragraph (1) of the Corporation Tax Act" is deemed to be replaced with "as "amount of the distribution of profit from a foreign special investment trust" (excluding the amount of the distribution of profit from a foreign special investment trust to be received from a specified foreign subsidiary company, etc. prescribed in Article 66-6, paragraph (1) (limited to the one that falls under the category of foreign subsidiary company prescribed in Article 23-2, paragraph (1) of the Corporation Tax Act) or a specified foreign corporation prescribed in Article 66-9-2, paragraph (1) (limited to the one that falls under the category of foreign subsidiary company prescribed in Article 23-2, paragraph (1) of the same Act) (limited to the amount up to the specified taxable income prescribed in Article 66-8, paragraph (3) or the amount up to the specified taxable income prescribed in Article 66-9-4, paragraph (3))) is deemed to be excluded .... prescribed in Article 23-2, paragraph (1) of the same Act".

**Section 25 Special Provisions for Taxation on Transactions of  
Consolidated Corporations with Foreign Affiliated Persons**

(Special Provisions for Taxation on Transactions of Consolidated Corporations with Foreign Affiliated Persons)

Article 39-112 (1) The special relationship specified by Cabinet Order prescribed in Article 68-88, paragraph (1) of the Act is the relationship listed as follows:

- (i) a relationship whereby either of two corporations directly or indirectly holds 50 percent or more of the total number or total amount of the other corporation's issued shares or capital contributions (excluding the own shares held by either of those two corporations; hereinafter referred to as the "Issued Shares, etc." through to paragraph (3));
- (ii) where 50 percent or more of the total number or total amount of the Issued Shares, etc. of two corporations are respectively held directly or indirectly by the same person (where the person is an individual, the individual and an individual who has a special relationship specified by Cabinet Order prescribed in Article 2, item (x) of the Corporation Tax Act with the individual; the same applies in item (v)), the relationship between those two corporations (excluding relationships falling under the category or relationships listed in the preceding item);
- (iii) a relationship whereby the existence of the facts listed as follows or any other facts equivalent thereto (referred to as a "specified fact" in the following item and item (v)) enables either of two corporations to determine substantially the whole or a part of the other corporation's business policies (excluding relationships falling under the category of relationships listed in the preceding two items):
  - (a) the fact that 50 percent or more of the officers of the relevant other corporation or any officers who have authority to represent the relevant other corporation are persons who concurrently serve as officers or employees of the relevant one of the two corporations or who used to serve as officers or employees of the relevant one of the two corporations;
  - (b) the fact that the relevant other corporation depends on transactions with the relevant one of the two corporations for a considerable part of its business activities;
  - (c) the fact that the relevant other corporation procures a considerable part of the funds necessary for its business activities by receiving loans from the relevant one of the two corporations or by obtaining guarantees from the relevant one of the two corporations;
- (iv) the relationship between a single corporation and any of the corporations listed as follows (excluding relationships falling under the category of relationships listed in the preceding three items):
  - (a) a corporation in a relationship whereby 50 percent or more of the number or the amount of its Issued Shares, etc. are held directly or indirectly by

- the single corporation or the whole or a part of its business policies can be substantially determined by the single corporation due to the existence of a specified fact;
- (b) a corporation in a relationship whereby 50 percent or more of the number or the amount of its Issued Shares, etc. are held directly or indirectly by a corporation listed in (a) or (c) or the whole or a part of its business policies can be substantially determined by the corporation due to the existence of a specified fact;
  - (c) a corporation in a relationship whereby 50 percent or more of the number or the amount of its Issued Shares, etc. are held directly or indirectly by a corporation listed in (b) or the whole or a part of its business policies can be substantially determined by the corporation due to the existence of a specified fact;
- (v) the relationship between two corporations whereby the two corporations respectively fall under the category of any of the corporations listed as follows (limited to the case where a single person prescribed in (a) is the same person and excluding relationships falling under the category of relationships listed in the preceding items):
- (a) a corporation in a relationship whereby 50 percent or more of the number or the amount of its Issued Shares, etc. are held directly or indirectly by a single person or the whole or a part of its business policies can be substantially determined by the person due to the existence of a specified fact;
  - (b) a corporation in a relationship whereby 50 percent or more of the number or the amount of its Issued Shares, etc. are held directly or indirectly by a corporation listed in (a) or (c) or the whole or a part of its business policies can be substantially determined by the corporation due to the existence of a specified fact;
  - (c) a corporation in a relationship whereby 50 percent or more of the number or the amount of its Issued Shares, etc. are held directly or indirectly by a corporation listed in (b) or the whole or a part of its business policies can be substantially determined by the corporation due to the existence of a specified fact.
- (2) In the case referred to in item (i) of the preceding paragraph, whether or not one of those two corporations directly or indirectly holds 50 percent or more of the number or the amount of the other corporation's Issued Shares, etc. is to be determined according to the ratio obtained by adding the ownership ratio for the shares, etc. pertaining to the relevant other corporation held directly by the relevant one of the two corporations (meaning the ratio of the number or the amount of the relevant other corporation's shares or capital contributions held by the relevant one of the two corporations out of the total Issued Shares,



etc. of the relevant other corporation) and the ownership ratio for the shares, etc. pertaining to the relevant other corporation held indirectly by the relevant one of the two corporations.

- (3) The ownership ratio for the shares, etc. held indirectly that is prescribed in the preceding paragraph is the ratio specified respectively in the following items for the category of cases listed in the relevant items (where falling under both of the following cases, the sum of the ratios specified respectively as follows):
- (i) where 50 percent or more of the number or the amount of the Issued Shares, etc. of a corporation which is a shareholder, etc. (meaning a shareholder, etc. prescribed in Article 2, item (xiv) of the Corporation Tax Act; the same applies in the following item) of the other corporation set forth in the preceding paragraph are held by the relevant one of the two corporations set forth in the preceding paragraph: The ratio of the number or the amount of shares or capital contributions of the relevant other corporation held by the corporation which is a shareholder, etc. out of the total Issued Shares, etc. of the relevant other corporation (where there are two or more of those corporations which are shareholders, etc., the sum of the ratios calculated for each of them);
  - (ii) where a single corporation or two or more corporations intervene between a corporation which is a shareholder, etc. of the other corporation set forth in the preceding paragraph (excluding a corporation which is a shareholder, etc. set forth in the preceding item falling under the case listed in the same item) and the relevant one of the two corporations set forth in the preceding paragraph, and have a linkage with them through holding the Issued Shares, etc. (hereinafter that intervening corporation is referred to as a "Capital Contribution-Related Corporation" in this item) (limited to the case where 50 percent or more of the number or the amount of the Issued Shares, etc. of each of a Capital Contribution-Related Corporation and the corporation which is a shareholder, etc. are held by the relevant one of the two corporations or a Capital Contribution-Related Corporation (the relevant one of the two corporations or Capital Contribution-Related Foreign Corporation is limited to those, 50 percent or more of the number or the amount of whose Issued Shares, etc. are held by the relevant one of the two corporations or other Capital Contribution-Related Corporations)): The ratio of the number or the amount of shares or capital contributions of the relevant other corporation held by the corporation which is a shareholder, etc. out of the total Issued Shares, etc. of the relevant other corporation (where there are two or more of those corporations which are shareholders, etc., the sum of the ratios calculated for each of them).
- (4) The provisions of paragraph (2) apply mutatis mutandis to the determination

of a relationship whereby the shares, etc. are directly or indirectly held as set forth in item (ii), item (iv) and item (v) of paragraph (1).

(5) The normal profit margin specified by Cabinet Order prescribed in Article 68-88, paragraph (2), item (i), (b) of the Act is the ratio of the amount of gross profits gained by a person who purchased the same or similar inventory assets as those for a foreign affiliated transaction prescribed in paragraph (1) of the same Article (hereinafter referred to as a "Foreign Affiliated Transaction" in this Article) from a person who is not in a special relationship (meaning a special relationship prescribed in the same paragraph) (hereinafter the person who is not in the special relationship is referred to as a "Non-Affiliated Person" through to paragraph (7) and the person who purchased the inventory assets is referred to as a "Reseller" in this paragraph and paragraph (7), item (ii)) through a transaction to sell the same or similar inventory assets to a Non-Affiliated Person (hereinafter referred to as a "Comparable Transaction" in this paragraph) (the amount of gross profits means the amount obtained by deducting the sum of the costs of the inventory assets for a Comparable Transaction from the total revenue arising from the sale of the inventory assets for a Comparable Transaction) against the sum of the revenue; provided, however, that where functions performed by the selling side or any other particulars differ between a Comparable Transaction and a transaction in which the purchasing side of the inventory assets for a Foreign Affiliated Transaction sold the inventory assets to a Non-Affiliated Person, the normal profit margin is the ratio after making the necessary adjustment for the differences in ratios caused by the disparity.

(6) The normal profit margin specified by Cabinet Order prescribed in Article 68-88, paragraph (2), item (i), (c) of the Act is the ratio of the amount of gross profits gained by a person who acquired the same or similar inventory assets as those for a Foreign Affiliated Transaction through the purchase (limited to a purchase from a Non-Affiliated Person), manufacture or any other acts (hereinafter that person is referred to as a "seller" in this paragraph and item (iii) of the following paragraph) through a transaction to sell the same or similar inventory assets to a Non-Affiliated Person (hereinafter referred to as a "Comparable Transaction" in this paragraph) (the amount of gross profits means the amount obtained by deducting the sum of the costs of the inventory assets for a Comparable Transaction from the total revenue arising from the sale of the inventory assets for a Comparable Transaction) against the sum of the costs; provided, however, that where functions performed by the selling side or any other particulars differ between a Comparable Transaction and the Foreign Affiliated Transaction, the normal profit margin is the ratio after making a necessary adjustment for the differences in ratios caused by the disparity.

(7) The method specified by Cabinet Order prescribed in Article 68-88, paragraph (2), item (i), (d) of the Act is the method listed as follows:

(i) the method which uses, as the amount of consideration for a Foreign Affiliated Transaction, the amount calculated by deeming that the income, which arises from the purchase, manufacture, sale or any other acts conducted with regard to inventory assets for the Foreign Affiliated Transaction by a consolidated corporation set forth in Article 68-88, paragraph (1) of the Act or a foreign affiliated person prescribed in the same paragraph who is related to the consolidated corporation, is to be attributed to the consolidated corporation or foreign affiliated person, in accordance with the factors sufficient to estimate the amount of expenses or the value of fixed assets that the persons have spent or used for conducting the acts or any other levels of the persons' contribution to the income;

(ii) the method which uses, as the amount of consideration for a Foreign Affiliated Transaction, the amount that remains after deducting, from the amount of consideration gained by the purchasing side of inventory assets for a Foreign Affiliated Transaction for having sold the inventory assets to a non-affiliated person (hereinafter that amount of consideration is referred to as the "resale price" in this item), the amount obtained by multiplying the resale price by the ratio of the amount listed in (a) against the amount listed in (b) (where functions performed by the selling side or any other particulars differ between a transaction in which a Reseller has sold the same or similar inventory assets as the inventory assets to a non-affiliated person (hereinafter referred to as a "Comparable Transaction" in this item) and a transaction in which the purchasing side of the inventory assets for a Foreign Affiliated Transaction sold the inventory assets to a non-affiliated person, by the ratio after making a necessary adjustment for the differences in ratios caused by the disparity) and then adding the selling expenses and general administrative expenses needed for the sale of the inventory assets for a Foreign Affiliated Transaction:

(a) the sum of the operating profits arising from the sale of the inventory assets for a Comparable Transaction;

(b) the total revenue arising from the sale of the inventory assets for a Comparable Transaction;

(iii) the method which uses, as the amount of consideration for a Foreign Affiliated Transaction, the amount obtained by adding the amount of the costs spent by the selling side of inventory assets for a Foreign Affiliated Transaction for acquiring the inventory assets through the purchase, manufacture or any other acts (hereinafter referred to as the "Amount of Acquisition Costs" in this item), the amount obtained by multiplying the amount listed in (a) by the ratio of the amount listed in (b) against the

amount listed in (c) (where functions performed by the selling side or any other particulars differ between a transaction in which a seller sold the same or similar inventory assets as the inventory assets to a non-affiliated person (hereinafter referred to as a "Comparable Transaction" in this item) and the Foreign Affiliated Transaction, by the ratio after making a necessary adjustment for the differences in ratios caused by the disparity), and the sum of the amounts listed in (a), 2.:

(a) the sum of the amounts listed as follows:

1. the Amount of the Acquisition Costs;
2. the amount of the selling expenses and general administrative expenses needed for the sale of the inventory assets for a Foreign Affiliated Transaction;

(b) the sum of the operating profits arising from the sale of the inventory assets for a Comparable Transaction;

(c) the amount obtained by deducting the amount listed in (b) from the total revenue arising from the sale of the inventory assets for a Comparable Transaction;

(iv) the method equivalent to those listed in the preceding two items.

(8) The case specified by Cabinet Order prescribed in Article 68-88, paragraph (5) of the Act is the case where it has been determined in advance at the time of a transaction between a consolidated corporation set forth in the same paragraph and a non-affiliated person set forth in the same paragraph (hereinafter referred to as a "Non-Affiliated Person" in this paragraph and the following paragraph), under a contract or the like, that the assets for the transaction are to be sold, transferred, lent or provided to a foreign affiliated person related to the consolidated corporation set forth in paragraph (5) of the same Article and where the amount of consideration for the sale, transfer, lending or provision is deemed to have been substantially determined between the consolidated corporation and the foreign affiliated person, and the case where it has been determined in advance at the time of a transaction between a foreign affiliated person related to the consolidated corporation set forth in the same paragraph and a Non-Affiliated Person, under a contract or the like, that the assets for the transaction are to be sold, transferred, lent or provided to a consolidated corporation set forth in the same paragraph and where the amount of consideration for the sale, transfer, lending or provision is deemed to have been substantially determined between the consolidated corporation and the foreign affiliated person.

(9) Notwithstanding the provisions of Article 68-88, paragraph (2) of the Act, the arm's length price prescribed in paragraph (1) of the same Article for a transaction that was deemed to be a Foreign Affiliated Transaction under the provisions of paragraph (5) of the same Article is the amount calculated by

applying the provisions of paragraph (2) of the same Article by deeming that the transaction has been conducted between a consolidated corporation set forth in the preceding paragraph and a foreign affiliated person related to the consolidated corporation set forth in the same paragraph and by making a necessary adjustment with regard to the differences in the amount of consideration caused when a transaction between the consolidated corporation and the foreign affiliated person is conducted via a Non-Affiliated Person.

(10) The gross profit margin prescribed in Article 68-88, paragraph (6), item (i) of the Act or any other ratio specified by Cabinet Order as a ratio equivalent thereto is the ratio of the amount of gross profits gained by a corporation which is engaged in the same type of business and whose size and other details are similar as prescribed in the same item through the business for a business year containing the day on which a Foreign Affiliated Transaction set forth in the same item was conducted or for any other period equivalent thereto (that amount of gross profits means the amount obtained by deducting the sum of the costs of inventory assets for the relevant business year or any other period equivalent thereto (where the business is other than that pertaining to the sale of inventory assets, the sum of equivalent costs or expenses; hereinafter referred to as the "Amount of Gross Costs" in this paragraph) from the total revenue arising from the sale of the inventory assets (where the business is other than that pertaining to the sale of inventory assets, the total revenue pertaining to the business; hereinafter referred to as the "Amount of Gross Revenue" in this paragraph)) against the Amount of Gross Revenue or Gross Costs.

(11) The method specified by Cabinet Order as the method similar to the method specified by Cabinet Order prescribed in Article 68-88, paragraph (2), item (i), (d) of the Act or the method listed in paragraph (2), item (ii), (b) of the same Article (limited to the method equal to that specified by the same Cabinet Order) as prescribed in paragraph (6), item (ii) of the same Article is the method listed in items (i) to (iv), in the case where a Foreign Affiliated Transaction is for the sale or purchase of inventory assets, and the method listed in item (i) or item (v), in the case where a Foreign Affiliated Transaction is for other than the sale or purchase of inventory assets:

(i) the method which uses, as the amount of consideration for a Foreign Affiliated Transaction, the amount calculated by deeming that the income, which arises from a business pertaining to a Foreign Affiliated Transaction set forth in Article 68-88, paragraph (6) of the Act for the business year containing the date on which the Foreign Affiliated Transaction was conducted, based on financial statements containing the consolidated status of property and profits and losses of a corporate group which includes the consolidated corporation and a foreign affiliated person (meaning a foreign

affiliated person prescribed in paragraph (1) of the same Article) pertaining to the Foreign Affiliated Transaction conducted by the consolidated corporation (where the income arising from the business is not recorded separately from the income arising from other businesses in the financial statements, the income arising from businesses including the business; hereinafter the same applies in this item), or for any other period equivalent thereto, is to be attributed to the persons, in accordance with the factors sufficient to estimate the amount of expenses or the value of fixed assets that the persons have spent or used for conducting the Foreign Affiliated Transaction (where the amount of expenses or the value of fixed assets spent or used for the business is not recorded separately from the amount of expenses or the value of fixed assets spent or used for other businesses in the financial statements, the amount of expenses or the value of fixed assets spent or used for businesses including the business) or any other levels of the persons' contribution to the income;

(ii) the method which uses, as the amount of consideration for a Foreign Affiliated Transaction, the remaining amount of consideration gained by the purchasing side of inventory assets for a Foreign Affiliated Transaction for having sold the inventory assets to a non-affiliated person (meaning a person who is not in a special relationship therewith as prescribed in Article 68-88, paragraph (1) of the Act) (hereinafter that amount of consideration is referred to as the "resale price" in this item) after deducting the amount obtained by multiplying the resale price by the ratio of the amount listed in (a) against the amount listed in (b) and then adding the selling expenses and general administrative expenses needed for the sale of the inventory assets for a Foreign Affiliated Transaction:

(a) the sum of the operating profits gained by a corporation which is engaged in the same or similar type of business as those pertaining to the Foreign Affiliated Transaction and whose size and other details are similar (hereinafter referred to as a "Comparable Business" in this item) through the sale of inventory assets for the Comparable Business for a business year containing the day on which the Foreign Affiliated Transaction was conducted or for any other period equivalent thereto (hereinafter referred to as a "Comparable Business Year" in this item);

(b) the total revenue arising from the sale of the inventory assets for a Comparable Business for the Comparable Business Year;

(iii) the method which uses, as the amount of consideration for a Foreign Affiliated Transaction, the amount obtained by adding the amount of the costs spent by the selling side of inventory assets for the Foreign Affiliated Transaction for acquiring the inventory assets through the purchase, manufacture or any other acts (hereinafter referred to as the "Amount of

Acquisition Costs" in this item), the amount obtained by multiplying the amount listed in (a) by the ratio of the amount listed in (b) against the amount listed in (c), and the sum of the amounts listed in (a), 2.:

(a) the sum of the amounts listed as follows:

1. the Amount of the Acquisition Costs;
2. the amount of the selling expenses and general administrative expenses needed for the sale of the inventory assets for the Foreign Affiliated Transaction;

(b) the sum of the operating profits gained by a corporation which is engaged in the same or similar type of business as those pertaining to the Foreign Affiliated Transaction and whose size and other details are similar (hereinafter referred to as a "Comparable Business" in this item) through the sale of inventory assets for the Comparable Business for a business year containing the day on which the Foreign Affiliated Transaction was conducted or for any other period equivalent thereto (hereinafter referred to as a "Comparable Business Year" in this item);

(c) the amount obtained by deducting the amount listed in (b) from the total revenue arising from the sale of the inventory assets for the Comparable Business for the Comparable Business Year;

(iv) the method equivalent to those listed in the preceding two items;

(v) the method equal to those listed in the preceding three items.

(12) The requirements specified by Cabinet Order prescribed in Article 68-88, paragraph (19) of the Act are the requirements listed as follows:

(i) with regard to the arm's length price prescribed in Article 68-88, paragraph (19) of the Act which pertains to a Foreign Affiliated Transaction prescribed in the same paragraph, the Minister of Finance has reached an agreement, under a tax convention prescribed in the same paragraph, with the competent authority of a contracting state other than Japan of the tax convention;

(ii) the contracting state other than Japan set forth in the preceding item reduces a tax for a foreign affiliated person prescribed in Article 68-88, paragraph (19) of the Act, based on the agreement set forth in the preceding item, and does not add to the amount to be refunded due to the tax reduction, the part of the amount equivalent to the interest on refund that corresponds to the base period for the calculation for which the Minister of Finance has reached an agreement with the competent authority of the contracting state other than Japan.

(13) The delinquent tax imposed with regard to the corporation tax payable as prescribed in Article 68-88, paragraph (19) of the Act is the delinquent tax to be imposed on the amount obtained by deducting the amount equivalent to the corporation tax payable where the provisions of paragraph (1) of the same

Article do not apply from the corporation tax payable where the provisions of the same paragraph apply.

- (14) Where the provisions of Article 68-88, paragraph (1), paragraph (2), item (i), (a) or (b), or paragraph (5) of the Act or the provisions of paragraph (5) apply, the existence or not of any special relationship prescribed in these provisions is to be determined according to its status at the time when respective transactions were conducted.
- (15) With respect to the application of Article 155-16 of the Order for Enforcement of the Corporation Tax Act where the provisions of Article 68-88, paragraph (3) of the Act apply, the term "Article 81-6, paragraph (1) or paragraph (2) (Calculation of the Amount of Contributions Expended by Consolidated Corporations to Be Excluded from Deductible Expenses) of the Act" in the same Article is deemed to be replaced with "Article 81-6, paragraph (1) or paragraph (2) (Calculation of the Amount of Contributions Expended by Consolidated Corporations to Be Excluded from Deductible Expenses) of the Act or Article 68-88, paragraph (3) (Special Provisions for Taxation on Transactions of Consolidated Corporations with Foreign Affiliated Persons) of the Act on Special Measures Concerning Taxation"; and the term "Article 81-6, paragraph (2) of the Act" in item (ii) of the same Article is deemed to be replaced with "Article 81-6, paragraph (2) of the Act or Article 68-88, paragraph (3) of the Act on Special Measures Concerning Taxation".

(Application Procedures for Grace of Tax Payment under the Special Provisions for Taxation on Transactions of Consolidated Corporations with Foreign Affiliated Persons)

Article 39-112-2 (1) The amount calculated as specified by Cabinet Order as the amount of corporation tax and additional tax for the corporation tax prescribed in Article 68-88-2, paragraph (1) of the Act is the sum of the amounts listed as follows:

- (i) the amount obtained by deducting the amount of corporation tax payable where the calculation has been made by deeming that the reassessment or determination for the objection prescribed in Article 68-88-2, paragraph (1) of the Act (meaning the reassessment or determination listed in Article 68-88, paragraph (16), item (i) of the Act; hereinafter the same applies in this item and paragraph (3), item (ii)) does not cover the part pertaining to the corporation tax prescribed in Article 68-88-2, paragraph (1) of the Act (referred to as the "amount of corporation tax not under grace" in the following item) from the amount of corporation tax payable based on the reassessment or determination (referred to as the "amount of corporation tax based on the reassessment or determination" in the following item);
- (ii) the amount obtained by deducting the amount of additional tax (meaning



additional tax prescribed in Article 69 of the Act on General Rules for National Taxes; hereinafter the same applies in this item) to be imposed based on the amount of corporation tax not under grace from the amount of additional tax to be imposed based on the amount of corporation tax based on the reassessment or determination.

(2) The case where there is no agreement prescribed in Article 68-88-2, paragraph (1) of the Act or any other case specified by Cabinet Order is the case listed respectively in the following items and the date specified by Cabinet Order prescribed in the same paragraph is the date on which the Commissioner of the National Tax Agency notified the fact that the case falls under any of those set forth in the relevant items:

(i) where the Commissioner of the National Tax Agency finds that an agreement set forth in Article 68-88-2, paragraph (1) of the Act (referred to as an "agreement" in the following item and item (iii)) cannot be reached even if the consultation prescribed in the same paragraph (hereinafter referred to as a "Mutual Consultation" in this paragraph) is continued (excluding the case listed in the items of Article 68-88-2, paragraph (5) of the Act), when they have made a request for the termination of the Mutual Consultation to the competent authority of the other contracting state pertaining to the Mutual Consultation (meaning a contracting state other than Japan of a tax convention prescribed in Article 1-3, paragraph (1), item (ii); the same applies in the following item) and has obtained consent from the competent authority;

(ii) where the competent authority of the other contracting state pertaining to a consultation finds that an agreement cannot be reached even if the Mutual Consultation were continued, when the Commissioner of the National Tax Agency has received a request for the termination of the Mutual Consultation from the competent authority and has given their consent;

(iii) where an agreement has been reached on the amount of corporation tax prescribed in Article 68-88-2, paragraph (1) of the Act, when the agreement is not to change the amount of corporation tax.

(3) A person intending to receive a grace of tax payment under the provisions of Article 68-88-2, paragraph (1) of the Act must submit a written application containing the particulars listed as follows along with a document certifying that they have filed an objection set forth in the same paragraph and other documents specified by Ministry of Finance Order to the district director, etc. prescribed in Article 46, paragraph (1) of the Act on General Rules for National Taxes:

(i) the name and place for tax payment of a corporation intending to receive the grace of tax payment (where the place for tax payment and the location of its head office or principal office are different, the corporation's name, place for

- tax payment and location of the head office or principal office);
- (ii) the business year, due date and the amount of payable corporation tax based on the reassessment or determination;
  - (iii) the amount for which the corporation intends to receive a grace of tax payment out of the amount set forth in the preceding item;
  - (iv) where the amount for which the corporation intends to receive a grace of tax payment exceeds 500,000 yen, the type, amount, value and location of the security listed in the items of Article 50 of the Act on General Rules for National Taxes which it intends to provide at the time of filing the application (when the security is a guarantee by a guarantor, the guarantor's name and the location, address or domicile of their head office or principal office) and any other particulars for reference concerning the security (where there is any special circumstance whereby the corporation cannot provide security, the circumstance).
- (4) With respect to the application of the provisions of Article 23, paragraph (1) of the Order for Enforcement of the Act on General Rules for National Taxes, regarding the corporation tax for which a grace of tax payment has been received pursuant to the provisions of Article 68-88-2, paragraph (1) of the Act, the term "or national tax" in Article 23, paragraph (1) of the same Order is deemed to be replaced with "(including a grace of tax payment under the provisions of Article 68-88-2, paragraph (1) (Grace of Tax Payment under the Special Provisions for Taxation on Transactions of Consolidated Corporations with Foreign Affiliated Persons) of the Act on Special Measures Concerning Taxation) or national tax".

**Section 26 Special Provisions for Taxation on Interest on Liabilities Payable by Consolidated Corporations to Foreign Controlling Shareholders**

- (Special Provisions for Taxation on Interest on Liabilities Payable by Consolidated Corporations to Foreign Controlling Shareholders)
- Article 39-113 (1) The amount calculated as specified by Cabinet Order as the amount equivalent to the excess part prescribed in Article 68-89, paragraph (1) of the Act is the amount specified respectively in the following items for the category of cases listed in the relevant items:
- (i) where the amount that remains after deducting the amount listed in (b) from the amount listed in (a) is equivalent to or less than the amount listed in (c): The amount obtained by calculating the amount of expenses listed in the items of paragraph (14) which the consolidated corporation pays for the relevant consolidated business year to a foreign controlling shareholder, etc. (meaning a foreign controlling shareholder, etc. prescribed in Article 68-89,

- paragraph (4), item (i) of the Act; hereinafter the same applies in this Article) and a fund provider, etc. (meaning a fund provider, etc. prescribed in item (ii) of the same paragraph; hereinafter the same applies in this Article) related to the consolidated corporation (that expense is limited to what is to be paid, in the case prescribed in item (ii) or item (iii) of paragraph (13), when the interest on liabilities pertaining to the funds set forth in those items is included in the taxable income (meaning the taxable income prescribed in Article 68-89, paragraph (4), item (ix) of the Act; the same applies in (b)) of the person who is to receive payment of the interest; that amount of expenses is referred to as the "amount of guarantee charge, etc. for the taxable income" in the following item) and then multiplying the amount of expenses by the ratio obtained by dividing the amount that remains after deducting the amount listed in (c) from the amount listed in (a) (the remaining amount is referred to as the "amount exceeding the average balance of liabilities" in the following item and the following paragraph) by the amount listed in (b):
- (a) the average balance of liabilities (meaning the average balance of liabilities prescribed in Article 68-89, paragraph (4), item (v) of the Act; hereinafter the same applies in this Article) regarding the liabilities owed, for the relevant consolidated business year of the consolidated corporation, to the foreign controlling shareholder, etc. and fund provider, etc. (meaning the liabilities owed to a foreign controlling shareholder, etc. and a fund provider, etc. prescribed in item (iv) of the same paragraph; hereinafter the same applies in this Article);
  - (b) the average balance of liabilities regarding the liabilities specified by Cabinet Order prescribed in Article 68-89, paragraph (4), item (iv) of the Act owed to a fund provider, etc. (limited to the liabilities regarding those whose interest is included in the taxable income of a person who is to receive payment of the interest);
  - (c) the amount obtained by multiplying the equity interest held by a foreign controlling shareholder, etc. for the relevant consolidated business year of the consolidated corporation (meaning the equity interest held by a foreign controlling shareholder, etc. prescribed in Article 68-89, paragraph (4), item (vi) of the Act; the same applies in paragraph (4) and paragraph (7)) by three (where the consolidated corporation receives the application of the provisions of paragraph (3) of the same Article, by the multiple number prescribed in the same paragraph);
- (ii) where the amount that remains after deducting the amount listed in (b) from the amount listed in (a) of the preceding item exceeds the amount listed in (c): The sum of the amounts listed as follows:
- (a) the amount obtained by deducting the amount of guarantee charge, etc.

for the taxable income from the amount of interest on liabilities, etc. (meaning the interest on liabilities, etc. prescribed in Article 68-89, paragraph (4), item (iii) of the Act; hereinafter the same applies in this Article) that the consolidated corporation pays for the relevant consolidated business year to the foreign controlling shareholder, etc. and fund provider, etc. and then multiplying the amount that remains after deduction by the ratio obtained by dividing the amount that remains after deducting the amount listed in (b) of the preceding item from the amount exceeding the average balance of liabilities by the amount that remains after deducting the amount listed in (b) of the same item from the amount listed in (a) of the same item;

(b) the amount of guarantee charge, etc. for the taxable income.

- (2) With respect to the application of the provisions of the preceding paragraph where the amount that remains after deducting the amount obtained by multiplying the amount of equity capital (meaning the amount of equity capital prescribed in Article 68-89, paragraph (4), item (vii) of the Act; hereinafter the same applies in this Article) for the relevant consolidated business year of the consolidated corporation by three from the average balance of liabilities regarding the total liabilities prescribed in Article 68-89, paragraph (1) of the Act for the relevant consolidated business year of the consolidated corporation is less than the amount exceeding the average balance of liabilities for the relevant consolidated business year of the consolidated corporation, in item (i) of the preceding paragraph, the term "the amount that remains after deducting the amount listed in (b) from the amount listed in (a) is equivalent to or less than the amount listed in (c)" is deemed to be replaced with "the amount that remains after deducting the amount obtained by multiplying the amount of equity capital prescribed in Article 68-89, paragraph (4), item (vii) of the Act for the relevant consolidated business year of the consolidated corporation by three from the average balance of liabilities regarding the total liabilities prescribed in Article 68-89, paragraph (1) of the Act for the relevant consolidated business year of the consolidated corporation (hereinafter the remaining amount is referred to as "the amount exceeding the average balance of the total liabilities" in this paragraph) is equivalent to or less than the amount listed in (c)"; the term "Article 68-89, paragraph (4), item (i) of the Act" is deemed to be replaced with "paragraph (4), item (i) of the same Article"; and the term "amount that remains after deducting the amount listed in (c) from the amount listed in (a) (the remaining amount is referred to as the "amount exceeding the average balance of liabilities" in the following item and the following paragraph)" is deemed to be replaced with "the amount exceeding the average balance of the total liabilities"; and in item (ii) of the same paragraph, the term "the amount that remains after deducting the amount listed in (b)

from the amount listed in (a) of the preceding item exceeds the amount listed in (c)" is deemed to be replaced with "the amount exceeding the average balance of the total liabilities exceeds the amount listed in (c)"; and the term "the amount exceeding the average balance of liabilities" is deemed to be replaced with "the amount exceeding the average balance of the total liabilities".

- (3) Where the provisions of Article 68-89, paragraph (1) of the Act apply, the amount of interest on liabilities, etc. to be paid by a consolidated corporation prescribed in the same paragraph to the foreign controlling shareholder, etc. and fund provider, etc. for the relevant consolidated business year is to be based on the amount posted by the consolidated corporation as an expense for the relevant consolidated business year.
- (4) With respect to the application of the provisions of Article 68-89, paragraph (1) of the Act where there are two or more foreign controlling shareholders, etc. related to the consolidated corporation, the average balance of liabilities regarding the liabilities owed to foreign controlling shareholders, etc. and fund providers, etc., equity interest held by foreign controlling shareholders, etc. and the amount of interest on liabilities, etc. to be paid to foreign controlling shareholders, etc. and fund providers, etc. are to be based on the sum of the average balance of liabilities regarding the liabilities owed to foreign controlling shareholders, etc. and fund providers, etc., equity interest held by foreign controlling shareholders, etc. and the amount of interest on liabilities, etc. to be paid to foreign controlling shareholders, etc. and fund providers, etc., respectively.
- (5) The average balance of liabilities pertaining to a specified bond transaction with a repurchase/resale agreement, etc. which is calculated as specified by Cabinet Order and is to be deducted from the average balance of liabilities regarding the liabilities owed to a foreign controlling shareholder, etc. and a fund provider, etc. prescribed in Article 68-89, paragraph (2) of the Act is the average balance of liabilities regarding the liabilities owed to a foreign controlling shareholder, etc. and a fund provider, etc. related to the consolidated corporation which pertain to a specified bond transaction with a repurchase/resale agreement, etc. (meaning a specified bond transaction with a repurchase/resale agreement, etc. prescribed in Article 68-89, paragraph (4), item (viii) of the Act; the same applies in the following paragraph and paragraph (8)) (where the average balance of liabilities exceeds the average balance of assets regarding assets pertaining to a specified bond transaction with a repurchase/resale agreement, etc. (the average balance of assets means the amount calculated by a reasonable method as the average balance of the assets' book value for the relevant consolidated business year; the same applies in the following paragraph), that calculated average balance of liabilities is the

average balance of assets; that average balance of assets is referred to as the "average balance of liabilities after adjustment" in paragraph (8)).

- (6) The average balance of liabilities pertaining to a specified bond transaction with a repurchase/resale agreement, etc. which is calculated as specified by Cabinet Order and is to be deducted from the average balance of liabilities regarding the total liabilities for the relevant consolidated business year prescribed in Article 68-89, paragraph (2) of the Act is the average balance of liabilities regarding the total liabilities for the relevant consolidated business year (limited to those which are to be the cause of payment of interest on liabilities, etc.; the same applies in paragraph (10)) which pertain to a specified bond transaction with a repurchase/resale agreement, etc. (where the average balance of liabilities exceeds the average balance of assets regarding assets pertaining to a specified bond transaction with a repurchase/resale agreement, etc., that calculated average balance of liabilities is the average balance of assets).
- (7) The multiple number applicable to the equity interest held by a foreign controlling shareholder, etc. which is calculated as specified by Cabinet Order prescribed in Article 68-89, paragraph (2) of the Act is the multiple number obtained by calculating the average balance of liabilities by deducting the average balance of liabilities pertaining to a specified bond transaction with a repurchase/resale agreement, etc. calculated as specified by Cabinet Order prescribed in the same paragraph from the average balance of liabilities regarding the liabilities owed to a foreign controlling shareholder, etc. and a fund provider, etc. prescribed in the same paragraph and then dividing the calculated average balance of liabilities by the equity interest held by the foreign controlling shareholder, etc. related to the consolidated corporation; and the multiple number applicable to the amount of equity capital which is calculated as specified by Cabinet Order prescribed in the same paragraph is the multiple number obtained by calculating the average balance of liabilities by deducting the average balance of liabilities pertaining to a specified bond transaction with a repurchase/resale agreement, etc. calculated as specified by Cabinet Order prescribed in the same paragraph from the average balance of liabilities regarding the total liabilities for the relevant consolidated business year prescribed in the same paragraph and then dividing the calculated average balance of liabilities by the amount of equity capital of the consolidated corporation.
- (8) The amount of interest on liabilities, etc. pertaining to a specified bond transaction with a repurchase/resale agreement, etc. which is calculated as specified by Cabinet Order and is to be deducted from the amount of interest on liabilities, etc. to be paid to a foreign controlling shareholder, etc. and a fund provider, etc. prescribed in Article 68-89, paragraph (2) of the Act is the

amount obtained by multiplying the amount of interest on liabilities, etc. to be paid to a foreign controlling shareholder, etc. and a fund provider, etc. related to the consolidated corporation which pertain to a specified bond transaction with a repurchase/resale agreement, etc. by the ratio obtained by dividing the average balance of liabilities after adjustment by the average balance of liabilities regarding the liabilities pertaining to the specified bond transaction with a repurchase/resale agreement, etc.

- (9) With respect to the application of the provisions of paragraphs (1) to (4) in the case where the provisions of Article 68-89, paragraph (2) of the Act is applied, the term "and then multiplying the amount of expenses by the ratio" in paragraph (1), item (i) is deemed to be replaced with ", then deducting the amount obtained by multiplying the part of the amount of expenses that pertains to a specified bond transaction with a repurchase/resale agreement, etc. (meaning a specified bond transaction with a repurchase/resale agreement, etc. prescribed in Article 68-89, paragraph (4), item (viii) of the Act; hereinafter the same applies in this item) by the ratio obtained by dividing the average balance of liabilities after adjustment (meaning the average balance of liabilities after adjustment prescribed in paragraph (5); hereinafter the same applies in this item) regarding the liabilities for the amount by the average balance of liabilities regarding the liabilities for the amount which pertains to a specified bond transaction with a repurchase/resale agreement, etc., and then multiplying the amount that remains after deduction by the ratio"; the term "The average balance of liabilities (meaning the average balance of liabilities prescribed in item (v) of the same paragraph; hereinafter the same applies in this Article)" in (a) of paragraph (1), item (i) is deemed to be replaced with "The amount that remains after deducting the average balance of liabilities after adjustment from the average balance of liabilities"; the term "The average balance of liabilities" in (b) of the same item is deemed to be replaced with "The amount that remains after deducting the average balance of liabilities after adjustment regarding the liabilities from the average balance of liabilities"; the term "three" in (c) of the same item is deemed to be replaced with "two"; the term "The amount obtained by deducting the amount of guarantee charge, etc. for the taxable income" in (a) of paragraph (1), item (ii) is deemed to be replaced with "The amount obtained by deducting the sum of the amount of interest on liabilities, etc. pertaining to a specified bond transaction with a repurchase/resale agreement, etc. prescribed in paragraph (2) of the same Article and the amount of guarantee charge, etc. for the taxable income"; the term "where the amount that remains after deducting the amount" in paragraph (2) is deemed to be replaced with "where the amount that remains after deducting the sum of the average balance of liabilities regarding the average balance of liabilities which pertain to a specified bond

transaction with a repurchase/resale agreement, etc. prescribed in paragraph (6) and the amount"; and the term "by three" in the same paragraph is deemed to be replaced with "by two".

- (10) The percentage specified by Cabinet Order prescribed in Article 68-89, paragraph (3) of the Act is the percentage of the amount of the total liabilities of a domestic corporation whose business size set forth in paragraph (3) of the same Article and other details are similar to those of a consolidated corporation which seeks the application of the provisions of the same paragraph (hereinafter referred to as an "Applicable Corporation" in this paragraph) on the final day of any of the domestic corporation's relevant business years or consolidated business years that ended within three years until the final day of the Applicable Corporation's relevant consolidated business year (where the Applicable Corporation receives the application of the provisions of paragraph (2) of the same Article, the percentage of the remaining amount of the total liabilities after deducting the amount specified by Ministry of Finance Order) against the sum of the amounts of stated capital, statutory reserve, and surplus on the same day. In this case, where there are any fractions after two decimal places, they are to be rounded up.
- (11) The special relationship specified by Cabinet Order prescribed in Article 68-89, paragraph (4), item (i) of the Act is the relationship listed as follows:
- (i) a relationship whereby out of the total number or total amount of issued shares or capital contributions of the consolidated corporation (excluding its own shares or capital contributions held by the corporation) (hereinafter referred to as the "Issued Shares, etc." in this Article), 50 percent or more of shares or capital contributions (hereinafter referred to as the "Shares, etc." in this Article) are held directly or indirectly by a foreign controlling shareholder, etc.;
  - (ii) where 50 percent or more of the Issued Shares, etc. of the consolidated corporation and a foreign corporation are respectively held directly or indirectly by the same person (where the person is an individual, including an individual who has a special relationship prescribed in Article 4, paragraph (1) of the Order for Enforcement of the Corporation Tax Act with the individual), the relationship between the consolidated corporation and the foreign corporation (excluding any relationship falling under that listed in the preceding item);
  - (iii) a relationship whereby the existence of the facts listed as follows or any other facts equivalent thereto between the consolidated corporation and a nonresident (meaning a nonresident prescribed in Article 2, paragraph (1), item (i)-2 of the Act) or a foreign corporation (hereinafter that nonresident or foreign corporation is referred to as a "nonresident, etc." in this item) enables the nonresident, etc. to determine substantially the whole or a part of the



consolidated corporation's business policies (excluding any relationship falling under that listed in the preceding two items):

- (a) the fact that the consolidated corporation depends on transactions with the nonresident, etc. for a considerable part of its business activities;
- (b) the fact that the consolidated corporation procures a considerable part of the funds necessary for its business activities by receiving loans from the nonresident, etc. or by obtaining guarantees from the nonresident, etc.;
- (c) the fact that 50 percent or more of the officers of the consolidated corporation or any officers who have authority to represent the consolidated corporation are persons who concurrently serve as officers or employees of the foreign corporation or who used to serve as officers or employees of the foreign corporation.

(12) The provisions of Article 39-112, paragraph (2) and paragraph (3) apply *mutatis mutandis* to the determination as to whether or not 50 percent or more of the Issued Shares, etc. set forth in item (i) and item (ii) of the preceding paragraph are held directly or indirectly.

(13) A person who provides a consolidated corporation with funds and a person specified by Cabinet Order as being related to the provision of funds as prescribed in Article 68-89, paragraph (4), item (ii) of the Act is any of the following:

- (i) where it is found that a foreign controlling shareholder, etc. related to the consolidated corporation has provided the consolidated corporation with funds via a third party: the third party;
- (ii) where it is found that a foreign controlling shareholder, etc. related to the consolidated corporation has offered guarantees for the consolidated corporation's liabilities to a third party and thereby the third party has provided the consolidated corporation with funds: that third party;
- (iii) where it is found that bonds lent by a foreign controlling shareholder, etc. related to the consolidated corporation to the consolidated corporation (including bonds lent by a third party to the consolidated corporation based on guarantees for the consolidated corporation's liabilities offered by the foreign controlling shareholder, etc.) have been provided to any other third party as security and have been transferred in a bond transaction with a repurchase/resale agreement (meaning a bond transaction with a repurchase/resale agreement prescribed in Article 42-2, paragraph (1) of the Act) or lent in a cash-secured bond lending transaction (meaning a cash-secured bond lending transaction prescribed in Article 66-5, paragraph (4), item (viii) of the Act) and thereby the relevant other third party has provided the consolidated corporation with funds: that third party and the relevant other third party.

(14) The expense specified by Cabinet Order prescribed in Article 68-89,

paragraph (4), item (iii) of the Act is the expense listed as follows:

- (i) in the case prescribed in item (ii) of the preceding paragraph, the guarantee charge for the liabilities set forth in the same item which a consolidated corporation set forth in the same item pays to a foreign controlling shareholder, etc. related to the consolidated corporation;
  - (ii) in the case prescribed in item (iii) of the preceding paragraph, the charge for bonds set forth in the same item or guarantee charge for the liabilities set forth in the same item which a consolidated corporation set forth in the same item pays to a foreign controlling shareholder, etc. related to the consolidated corporation or the charge for bonds set forth in the same item which the consolidated corporation pays to a third party set forth in the same item.
- (15) The liabilities specified by Cabinet Order prescribed in Article 68-89, paragraph (4), item (iv) of the Act are the liabilities set forth in the items of paragraph (13) in the cases prescribed in the relevant items.
- (16) The amount calculated as specified by Cabinet Order as the average amount of liabilities prescribed in Article 68-89, paragraph (4), item (v) of the Act is the amount calculated by a reasonable method as the average balance of the book value of the liabilities for the relevant consolidated business year.
- (17) The amount calculated as specified by Cabinet Order as the interest on a consolidated corporation's net assets held by a foreign controlling shareholder, etc. as prescribed in Article 68-89, paragraph (4), item (vi) of the Act is the amount obtained by multiplying the amount of equity capital for the relevant consolidated business year of the consolidated corporation by the ratio of the Shares, etc. regarding the consolidated corporation held directly or indirectly by a foreign controlling shareholder, etc. on the final day of the relevant consolidated business year out of the consolidated corporation's Issued Shares, etc.
- (18) The Shares, etc. held directly or indirectly as prescribed in the preceding paragraph are the total number or the sum of the consolidated corporation's Shares, etc. held directly by a foreign controlling shareholder, etc. related to the consolidated corporation and the consolidated corporation's Shares, etc. held indirectly by the foreign controlling shareholder, etc. (meaning the Shares, etc. calculated by multiplying the consolidated corporation's Issued Shares, etc. by the ratio specified respectively in the following items for the category of cases listed in the relevant items (where falling under both of the following cases, the sum of the ratios specified respectively as follows)):
- (i) where the whole or a part of the Issued Shares, etc. of any other domestic corporation which is a shareholder, etc. (meaning a shareholder, etc. prescribed in Article 2, item (xiv) of the Corporation Tax Act; hereinafter the same applies in this item and paragraph (22)) of the consolidated corporation

are held by a foreign controlling shareholder, etc. related to the consolidated corporation: The ratio obtained by multiplying the foreign controlling shareholder, etc.'s ratio of shareholding (meaning the ratio of the Shares, etc. held by a shareholder, etc. out of the total Issued Shares, etc.; hereinafter the same applies in this paragraph and paragraph (22)) pertaining to the relevant other domestic corporation by the relevant other domestic corporation's ratio of shareholding pertaining to the consolidated corporation (where there are two or more other domestic corporations, the sum of the ratios calculated for each of them);

(ii) where a single domestic corporation or two or more domestic corporations intervene between the consolidated corporation and any other domestic corporation, the whole or a part of whose Issued Shares, etc. are held by a foreign controlling shareholder, etc. related to the consolidated corporation (hereinafter that intervening domestic corporation is referred to as a "capital contribution-related domestic corporation" in this paragraph) and the foreign controlling shareholder, etc., the relevant other domestic corporation, capital contribution-related domestic corporation and the consolidated corporation have a linkage through holding the Shares, etc.: The ratio obtained by multiplying the foreign controlling shareholder, etc.'s ratio of shareholding pertaining to the relevant other domestic corporation sequentially by the relevant other domestic corporation's ratio of shareholding pertaining to the capital contribution-related domestic corporation, by the capital contribution-related domestic corporation's ratio of shareholding pertaining to other capital contribution-related domestic corporations, and by the capital contribution-related domestic corporation's ratio of shareholding pertaining to the consolidated corporation (where there are two or more linkages, the sum of the ratios calculated for each of them).

(19) Where the consolidated corporation and a foreign controlling shareholder, etc. related to the consolidated corporation are in a relationship listed in paragraph (11), item (ii), when the same person prescribed in the same item is a resident or any other domestic corporation prescribed in Article 2, paragraph (1), item (i)-2 of the Act, the provisions of the preceding two paragraphs are to be applied by deeming the same person to be a foreign controlling shareholder, etc. related to the consolidated corporation.

(20) The amount calculated as specified by Cabinet Order as the amount of net assets prescribed in Article 68-89, paragraph (4), item (vii) of the Act is the amount that remains after deducting the amount listed in item (ii) from the amount listed in item (i) (where the remaining amount is less than the amount of consolidated individual stated capital, etc. prescribed in Article 2, item (xvii)-2 of the Corporation Tax Act on the final day of the relevant consolidated business year of the consolidated corporation (where the amount of

consolidated individual stated capital, etc. is less than the amount of stated capital or capital contributions, the amount of stated capital or capital contributions; hereinafter referred to as the "Amount of Consolidated Individual Stated Capital, etc." in this paragraph and paragraph (22)), that calculated amount is the Amount of Consolidated Individual Stated Capital, etc.):

(i) the amount calculated by a reasonable method as the average balance of the book value of the total assets for the relevant consolidated business year of the consolidated corporation (that book value means the amount that remains after deducting the amount reserved as a reserve fund by the appropriation of surplus and the amount reserved as a reserve for special depreciation pursuant to the provisions of Article 52-3 or Article 68-41 of the Act (limited to the amount reserved as a reserve fund by the appropriation of surplus) in lieu of reducing the book value of fixed assets by reckoning the amount into expenses for accounting purposes);

(ii) the amount calculated by a reasonable method as the average balance of the book value of the total liabilities for the relevant consolidated business year of the consolidated corporation.

(21) The book value set forth in paragraph (5) and paragraph (16) and the preceding paragraph is to be based on the amount of assets or liabilities that the domestic corporation entered in its accounting books.

(22) Where any other domestic corporation which is a shareholder, etc. of the consolidated corporation or a capital contribution-related domestic corporation (meaning a single domestic corporation or two or more domestic corporations which have a linkage with the consolidated corporation and the relevant other domestic corporation through holding the Shares, etc.; the same applies in the following paragraph) intervenes between the consolidated corporation and a foreign controlling shareholder, etc. related to the consolidated corporation, when the amount obtained by multiplying the amount of consolidated individual stated capital, etc. on the final day of the relevant consolidated business year of the consolidated corporation by the ratio of shareholding pertaining to the consolidated corporation of the relevant other domestic corporation or capital contribution-related domestic corporation exceeds the amount of stated capital, etc. prescribed in Article 39-13, paragraph (22) of the relevant other domestic corporation or capital contribution-related domestic corporation on the same day (for a corporation falling under the category of a corporation subject to corporation tax on consolidated income prescribed in Article 2, item (xvi) of the Corporation Tax Act, when the amount exceeds the amount of consolidated individual stated capital, etc.), the amount of equity capital pertaining to the consolidated corporation is the amount that remains after deducting from the amount of equity capital, either of the smaller amount

of the excess amount or the amount of the liabilities owed by the relevant other domestic corporation or capital contribution-related domestic corporation to a foreign controlling shareholder, etc. and a fund provider, etc. related to the consolidated corporation on the same day (referred to as the " deductible amount" in the following paragraph).

- (23) In the case prescribed in the preceding paragraph, when deeming a capital contribution-related domestic corporation set forth in the same paragraph to be the consolidated corporation set forth in the same paragraph and if there is any deductible amount pertaining to the capital contribution-related domestic corporation, the amount of stated capital, etc. set forth in the same paragraph of the capital contribution-related domestic corporation is the amount that remains after deducting the deductible amount from the amount of stated capital, etc.; and the amount of the liabilities owed by the capital contribution-related domestic corporation to a foreign controlling shareholder, etc. and a fund provider, etc. set forth in the same paragraph is the amount obtained by adding the amount of the liabilities owed to the foreign controlling shareholder, etc. and fund provider, etc. and the deductible amount.
- (24) With respect to the application of the provisions of Article 155-8 of the Order for Enforcement of the Corporation Tax Act in the case where the provisions of Article 68-89, paragraph (1) of the Act apply, the term "the sum of the amount of interest on liabilities prescribed in the same paragraph to be paid for the relevant business year" in Article 155-8, paragraph (1) of the same Order is deemed to be replaced with "the sum of the amount of interest on liabilities prescribed in the same paragraph to be paid for the relevant business year (where there is any amount that is not included in deductible expenses pursuant to the provisions of Article 68-89, paragraph (1) (Special Provisions for Taxation on Interest on Liabilities Payable by Consolidated Corporations to Foreign Controlling Shareholders) of the Act on Special Measures Concerning Taxation, the sum is the amount that remains after deducting the amount)"; the term "the sum of the amount of interest on liabilities that a domestic corporation set forth in the same paragraph pays for the business year set forth in the same paragraph" in paragraph (2) of the same Article is deemed to be replaced with "the sum of the amount of interest on liabilities that a domestic corporation set forth in the same paragraph pays for the business year set forth in the same paragraph (where there is any amount that is not included in deductible expenses pursuant to the provisions of Article 68-89, paragraph (1) (Special Provisions for Taxation on Interest on Liabilities Payable by Consolidated Corporations to Foreign Controlling Shareholders) of the Act on Special Measures Concerning Taxation, the sum is the amount that remains after deducting the amount)"; the term "the amount listed in item (i)" in paragraph (1) and paragraph (2) of the same Article is deemed to be replaced

with "the amount listed in item (i) (where there is any amount that is not included in deductible expenses pursuant to the provisions of Article 68-89, paragraph (1) of the Act on Special Measures Concerning Taxation, that amount is the amount that remains after deducting the amount equivalent to the amount exceeding the average balance of liabilities prescribed in Article 39-113, paragraph (1), item (i) (Calculation of the Amount of Interest on Liabilities Payable by Consolidated Corporations to Foreign Controlling Shareholders to Be Excluded from Deductible Expenses) of the Order for Enforcement of the Act on Special Measures Concerning Taxation (including the cases where it is applied following the deemed replacement of terms pursuant to the provisions of paragraph (9) of the same Article) (in the case where the provisions of paragraph (1) of the same Article are applied following the deemed replacement of terms pursuant to the provisions of paragraph (2) of the same Article, after deducting the amount equivalent to the amount exceeding the average balance of the total liabilities prescribed in the same item which is applied following the deemed replacement of terms pursuant to the provisions of paragraph (2) of the same Article))".

### **Section 27 Special Provisions for Taxation on Income of Specified Foreign Subsidiary Companies of Consolidated Corporations**

(Scope of Specified Foreign Subsidiary Companies Related to Consolidated Corporations)

Article 39-114 (1) The affiliated foreign company specified by Cabinet Order prescribed in Article 68-90, paragraph (1) of the Act is any of the following:

(i) an affiliated foreign company that has its head office or principal office in a state or territory where there are no taxes imposed on corporate income (meaning an affiliated foreign company prescribed in Article 68-90, paragraph (2), item (i) of the Act; hereinafter the same applies in this Article);

(ii) an affiliated foreign company whose tax imposed on its income for the relevant business year is 25 percent or less of the income.

(2) Whether or not an affiliated foreign company falls under the category of an affiliated foreign company set forth in item (ii) of the preceding paragraph is to be determined as specified as follows:

(i) the amount of income set forth in item (ii) of the preceding paragraph is the amount obtained by adding the amount of income calculated pursuant to the provisions of the laws and regulations concerning foreign corporation taxes (meaning foreign corporation taxes prescribed in Article 69, paragraph (1) of the Corporation Tax Act; hereinafter the same applies in this Section) of the state or territory where the affiliated foreign company's head office or

principal office is located (hereinafter referred to as the "State of the Head Office" in this Section) (where there are two or more laws and regulations concerning the foreign corporation taxes, pursuant to the provisions of the principal ones; hereinafter referred to as the "Laws and Regulations of the State of the Head Office" in this paragraph) with regard to the affiliated foreign company's income in its settlement of accounts for the relevant business year and the sum of the amounts listed in (a) to (e) pertaining to the calculated amount of income and then deducting therefrom the amount listed in (f) pertaining to the calculated amount of income:

- (a) the amount of income which is not to be included in the foreign corporation tax base under the Laws and Regulations of the State of the Head Office (excluding the amounts listed as follows):
  - 1. the amount listed in Article 23, paragraph (1), item (i) of the Corporation Tax Act to be received from a corporation located in the State of the Head Office (including the amount equivalent to the amount of profit reserve to be reduced by reason of the delivery of money or other assets on any of the grounds listed in the items of Article 24, paragraph (1) of the same Act; hereinafter referred to as the "Amount of a Dividend, etc." in this item and the following Article);
  - 2. the Amount of a Dividend, etc. to be received from a corporation located in a state or territory other than the State of the Head Office, which is not to be included in the foreign corporation tax base on condition that the ratio of the shares, etc. (meaning shares or capital contributions; hereinafter the same applies in this Section) held by the affiliated foreign company out of the total number or total amount of the corporation's issued shares or capital contributions (excluding its own shares held by the corporation) (hereinafter referred to as the "Issued Shares, etc." in this Section) is not less than the ratio specified by the Laws and Regulations of the State of the Head Office;
- (b) the Amount of a Dividend, etc. that the affiliated foreign company pays and which is included in deductible expenses;
- (c) the amount of foreign corporation tax that the affiliated foreign company pays and which is included in deductible expenses;
- (d) the amount equivalent to the amount of reserve belonging to the reserve for casualty set forth in Article 57-5, paragraph (1) or Article 57-6, paragraph (1) of the Act (hereinafter referred to as the "Insurance Reserve" in this paragraph and paragraph (2) of the following Article) that the affiliated foreign company has saved and which is included in deductible expenses, which is not to be included in deductible expenses when the provisions of Article 57-5 or Article 57-6 of the Act are to be applied;
- (e) where the amount of the Insurance Reserve that has been saved by the

affiliated foreign company and has been included in gross profits (limited to the Insurance Reserve that is to be saved when the provisions of Article 57-5 or Article 57-6 of the Act are to be applied) does not reach the amount to be included in gross profits when these provisions are to be applied, the amount of the shortfall;

- (f) the amount of foreign corporation tax that is refunded to the affiliated foreign company and which is included in gross profits;
- (ii) the amount of tax set forth in item (ii) of the preceding paragraph is the sum of the amounts listed as follows:
  - (a) the amount of foreign corporation tax to be imposed on the amount of the affiliated foreign company's income in its settlement of accounts for the relevant business year in the State of the Head Office or in a state or territory other than the State of the Head Office (including the amount to be deducted from the foreign corporation tax in the State of the Head Office by deeming that the affiliated foreign company has paid the amount under the Laws and Regulations of the State of the Head Office and excluding the amount of foreign corporation tax to be imposed on the amount listed in (a), 2. of the preceding item);
  - (b) the amount of foreign corporation tax reduced or exempted for the affiliated foreign company for the relevant business year in the State of the Head Office and which is deemed to have been paid by the affiliated foreign company pursuant to the provisions of a tax convention prescribed in Article 1-3, paragraph (1), item (ii);
- (iii) where foreign corporation tax rates of the State of the Head Office increase in accordance with the amount of income, the amount of foreign corporation tax set forth in (a) of the preceding item may be the amount calculated based on the highest rates out of the tax rates;
- (iv) where the amount of income set forth in item (ii) of the preceding paragraph proves to be a loss, the amount of foreign corporation tax is to be determined based on the foreign corporation tax rate to be applied in the State of the Head Office to any income that arises from revenue pertaining to the affiliated foreign company's principal business (in the case where the revenue falls under the category of the amount listed in 1. or 2. of item (i), (a), revenue other than the revenue).

(Calculation of Eligible Income of Specified Foreign Subsidiary Companies Related to Consolidated Corporations)

Article 39-115 (1) The amount of undistributed income calculated in accordance with the standards specified by Cabinet Order prescribed in Article 68-90, paragraph (2), item (ii) of the Act is the amount that remains after deducting the sum of the amounts listed in item (iii) and item (iv) pertaining to the



income of a specified foreign subsidiary company, etc. prescribed in paragraph (1) of the same Article (hereinafter referred to as a "Specified Foreign Subsidiary Company, etc." in this Article and paragraph (1) of the following Article) in its settlement of accounts for the relevant business year from the sum of the amounts listed in item (i) and item (ii) pertaining to the income (where the amount listed in item (i) pertaining to the income is a loss, the amount of undistributed income is the amount that remains after deducting the sum of the amount of loss and the sum of the amounts listed in item (iii) and item (iv) pertaining to the income from the amount listed in item (ii) pertaining to the income):

- (i) the amount of income or loss calculated, with regard to the income of a Specified Foreign Subsidiary Company, etc. in its settlement of accounts for the relevant business year, in accordance with the provisions of Part II, Chapter 1, Section 1, Subsection 2 to Subsection 9 (excluding Article 23, Article 23-2, Article 26, paragraphs (1) to (5), Articles 38 to 41, Article 55, paragraph (3), Article 57, Article 58, Article 59, and Articles 61-11 to 61-13 of the Corporation Tax Act), and Subsection 11 of the same Act, and the provisions of Article 43, Article 45-2, Article 52-2, Article 57-5, Article 57-6, Article 57-8, Article 57-10, Article 61-4, Articles 65-7 to 65-9 (limited to the part pertaining to item (xix) of the table in Article 65-7, paragraph (1) of the Act), Article 66-4, paragraph (3), Article 67-12 and Article 67-13 of the Act (hereinafter referred to as the "Provisions of the Laws and Regulations of Japan" in this item) (where the provisions of Article 68-88, paragraph (1) or Article 66-4, paragraph (1) of the Act is applied to a transaction with a consolidated corporation listed in the items of Article 68-90, paragraph (1) of the Act (including other consolidated corporations which have the consolidated full controlling interest with the consolidated corporation) or a domestic corporation listed in the items of Article 66-6, paragraph (1) of the Act that is related to the Specified Foreign Subsidiary Company, etc., the amount of income or loss calculated in accordance with the Provisions of the Laws and Regulations of Japan by deeming that the transaction was carried out at the arm's length price prescribed in these provisions);
- (ii) the amount of corporate income tax payable in the relevant business year (meaning taxes to be imposed based on the amount of the corporation's income in the State of the Head Office or in a state or territory other than the State of the Head Office or by local entities in those states or territories including the State of the Head Office (including taxes listed in the items of Article 141, paragraph (2) of the Order for Enforcement of the Corporation Tax Act to be imposed in those states or territories or by local entities in those states or territories) and taxes equivalent to incidental taxes to be imposed incidentally as prescribed in Article 2, item (xlv) of the Corporation

- Tax Act (excluding interest tax) and other taxes similar to the tax equivalent to the incidental taxes; hereinafter the same applies in this Article);
- (iii) the amount of corporate income tax to be refunded in the relevant business year;
  - (iv) the Amount of a Dividend, etc. to be received in the relevant business year from a subsidiary company (meaning another corporation (excluding any of the corporations listed in the following) in the case where either the percentage of the number or the amount of shares, etc. held by the Specified Foreign Subsidiary Company, etc. in the Issued Shares, etc. of the relevant other corporation or the percentage of the number or the amount of voting shares, etc. held by the Specified Foreign Subsidiary Company, etc. in the Issued Shares, etc. of the relevant other corporation is not less than 25 percent, and the shares have been held for six months or more until the day on which the obligation to pay the Amount of a Dividend, etc. that the Specified Foreign Subsidiary Company, etc. receives from the relevant other corporation is determined (or the day preceding that day in the case where the Amount of a Dividend, etc. is the amount of dividend, etc. specified by Ministry of Finance Order pertaining to the grounds prescribed in Article 24, paragraph (1) of the Corporation Tax Act; hereinafter the same applies in this item) (in the case where the relevant other corporation is a corporation established within six months before the day on which the obligation is determined, during the period from the date of the establishment until the day on which the obligation is determined)):
    - (a) the special purpose company prescribed in Article 67-14, paragraph (1) of the Act;
    - (b) the investment corporation prescribed in Article 67-15, paragraph (2) of the Act;
    - (c) the trust corporation prescribed in Article 68-3-2, paragraph (1) or paragraph (9) of the Act for a special purpose trust prescribed in paragraph (1) of the same Article;
    - (d) the trust corporation prescribed in Article 68-3-3, paragraph (1) or paragraph (9) of the Act for a special investment trust prescribed in paragraph (1) of the same Article (limited to those that satisfy the requirements listed in item (i), (b) and (c) of the same paragraph).
- (2) Notwithstanding the provisions of the preceding paragraph, a consolidated corporation listed in the items of Article 68-90, paragraph (1) of the Act may deem that the amount obtained by adding the amount of income calculated, with regard to the income of a Specified Foreign Subsidiary Company, etc. in its settlement of accounts for the relevant business year, pursuant to the provisions of the laws and regulations concerning corporate income taxes of the State of the Head Office of the Specified Foreign Subsidiary Company, etc.

(where there are two or more laws and regulations concerning the corporate income taxes, pursuant to the provisions of the principal ones; hereinafter referred to as the "Laws and Regulations of the State of the Head Office" in this paragraph), (where the provisions of Article 68-88, paragraph (1) or Article 66-4, paragraph (1) of the Act is applied to a transaction between the Specified Foreign Subsidiary Company, etc. and the consolidated corporation (including other consolidated corporations which have the consolidated full controlling interest with the consolidated corporation) or domestic corporation listed in the items of Article 66-6, paragraph (1) of the Act, the amount of income calculated pursuant to the provisions of the Laws and Regulations of the State of the Head Office by deeming that the transaction was carried out at the arm's length price prescribed in Article 68-88, paragraph (1) or Article 66-4, paragraph (1) of the Act), and the sum of the amount listed in items (i) to (xiii) pertaining to the calculated amount of income and then deducting therefrom the amount listed in items (xiv) to (xvii) pertaining to the calculated amount of income (where the amount calculated pursuant to the provisions of the Laws and Regulations of the State of the Head Office proves to be a loss, the amount is the amount that remains after deducting the sum of the amount of loss and the amount listed in items (xiv) to (xvii) pertaining to the calculated amount from the sum of the amounts listed in items (i) to (xiii) pertaining to the calculated amount) may be the amount calculated in accordance with the standards specified by Cabinet Order prescribed in Article 68-90, paragraph (2), item (ii) of the Act; provided, however, that this applies only when the relevant other consolidated corporations are not subject to the provisions of the preceding paragraph with regard to the calculated amount pertaining to the Specified Foreign Subsidiary Company, etc.:

- (i) the amount of income which is not to be included in the corporate income tax base for the relevant business year under the Laws and Regulations of the State of the Head Office;
- (ii) the Amount of a Dividend, etc. that the Specified Foreign Subsidiary Company, etc. pays and which is included in deductible expenses for the relevant business year;
- (iii) the excess amount that exceeds the amount equivalent to that to be included in deductible expenses, when the provisions of Article 31 of the Corporation Tax Act are to be applied, out of the amount included in deductible expenses for the relevant business year as the depreciation allowance for the depreciable assets that the Specified Foreign Subsidiary Company, etc. holds (excluding goodwill obtained on or before March 31, 1998) (that inclusive amount is limited to the amount calculated, with the acquisition costs of the depreciable assets (where there is any amount of past depreciation already included in deductible expenses for the relevant

- business year, the amount after deducting the amount) as the limit of the amount to be included in deductible expenses for the relevant business year);
- (iv) the amount equivalent to that included in deductible expenses for the relevant business year due to changes in the valuation of the assets that the Specified Foreign Subsidiary Company, etc. holds, which is not to be included in deductible expenses when the provisions of Article 33 of the Corporation Tax Act are to be applied;
  - (v) the amount equivalent to the amount of remuneration to be paid to the officers (meaning the officers prescribed in Article 2, item (xv) of the Corporation Tax Act; the same applies in paragraph (3) of the following Article) of the Specified Foreign Subsidiary Company, etc. included in deductible expenses for the relevant business year, which is not to be included in deductible expenses when the provisions of Article 34 or Article 35 of the same Act are to be applied;
  - (vi) the amount equivalent to the amount of remuneration to be paid to employees of the Specified Foreign Subsidiary Company, etc. included in deductible expenses for the relevant business year, which is not to be included in deductible expenses when the provisions of Article 36 of the Corporation Tax Act are to be applied;
  - (vii) the amount equivalent to the amount of a contribution that the Specified Foreign Subsidiary Company, etc. makes (excluding a contribution to the State of the Head Office or local entities in the state which is equivalent to that prescribed in Article 37, paragraph (3), item (i) of the Corporation Tax Act) and which is included in deductible expenses for the relevant business year, which is not to be included in deductible expenses when the provisions of paragraph (1) of the same Article and Article 66-4, paragraph (3) of the Act are to be applicable;
  - (viii) the amount of corporate income tax that the Specified Foreign Subsidiary Company, etc. pays and which is included in deductible expenses for the relevant business year;
  - (ix) the amount of a loss incurred in business years preceding the relevant business year, pursuant to the provisions of the Laws and Regulations of the State of the Head Office that are equivalent to those of Article 57, Article 58 or Article 59 of the Corporation Tax Act, which is included in deductible expenses for the relevant business year;
  - (x) the amount equivalent to the amount of Insurance Reserve that the Specified Foreign Subsidiary Company, etc. has reserved and which is included in deductible expenses for the relevant business year, which is not to be included in deductible expenses when the provisions of Article 57-5 or Article 57-6 of the Act are to be applied;
  - (xi) where the amount that has been included in gross profits for the relevant

- business year regarding the Insurance Reserve reserved by the Specified Foreign Subsidiary Company, etc. (limited to the Insurance Reserve that can be reserved when the provisions of Article 57-5 or Article 57-6 of the Act are to be applied) does not reach the amount to be included in gross profits when these provisions are to be applied, the amount of the shortfall;
- (xii) the amount equivalent to the amount of expenses equivalent to entertainment and social expenses prescribed in Article 61-4, paragraph (1) of the Act that the Specified Foreign Subsidiary Company, etc. pays and which is included in deductible expenses for the relevant business year, which is not to be included in deductible expenses when the provisions of the same Article are to be applied;
- (xiii) the amount equivalent to the amount of a loss of the Specified Foreign Subsidiary Company, etc. (meaning the amount of a loss related to a partnership, etc. prescribed in Article 67-12, paragraph (1) of the Act or the amount of a loss prescribed in Article 67-13, paragraph (1) of the Act incurred due to a partnership business prescribed in the same paragraph), which is not to be included in deductible expenses when the provisions of Article 67-12, paragraph (1) or Article 67-13, paragraph (1) of the Act are to be applied;
- (xiv) the amount equivalent to the amount which is to be included in deductible expenses when the provisions of Article 67-12, paragraph (2) or Article 67-13, paragraph (2) of the Act are to be applied;
- (xv) the amount of corporate income tax to be refunded to the Specified Foreign Subsidiary Company, etc. which is included in gross profits for the relevant business year;
- (xvi) the amount equivalent to that included in gross profits for the relevant business year due to changes in the valuation of the assets that the Specified Foreign Subsidiary Company, etc. holds, which is not to be included in gross profits when the provisions of Article 25 of the Corporation Tax Act are to be applied;
- (xvii) the amount listed in item (iv) of the preceding paragraph.
- (3) Where there is any amount of a deductible dividend, etc. (meaning the amount equivalent to the amount specified respectively in the following items for the category of cases listed in the relevant items; hereinafter the same applies in this paragraph) for the relevant business year of a Specified Foreign Subsidiary Company, etc. related to a consolidated corporation listed in the items of Article 68-90, paragraph (1) of the Act, the amount calculated in accordance with the standards specified by Cabinet Order prescribed in Article 68-90, paragraph (2), item (ii) of the Act is the amount that remains after deducting the amount of a deductible dividend, etc. from the amount calculated pursuant to these provisions, notwithstanding the provisions of paragraph (1)

or the preceding paragraph:

- (i) where the Amount of a Dividend, etc. that the Specified Foreign Subsidiary Company, etc. receives from any other Specified Foreign Subsidiary Company, etc. related to the consolidated corporation (including a Specified Foreign Subsidiary Company, etc. prescribed in Article 66-6, paragraph (1) of the Act, and excluding the one that falls under the category of subsidiary company prescribed in paragraph (1), item (iv); hereinafter referred to as the "Other Specified Foreign Subsidiary Company, etc." in this paragraph) in the relevant business year does not exceed the Amount of a Dividend payable corresponding to the capital contributions by the specified foreign subsidiary company, etc. out of the total Amount of a Dividend payable by the relevant Other Specified Foreign Subsidiary Company, etc. in the business year containing the base date for paying the dividend, etc. (hereinafter referred to as the "Base Business Year" in this paragraph) and the Base Business Year is the business year during which the individually taxable income prescribed in Article 68-90, paragraph (1) of the Act (hereinafter referred to as the "Individually Taxable Income" in this Section) or taxable income prescribed in Article 66-6, paragraph (1) of the Act (referred to as the "taxable income" in the following item) arises: The amount of the dividend, etc.;
  - (ii) where the Amount of a Dividend, etc. that the specified foreign subsidiary company, etc. receives from any Other Specified Foreign Subsidiary Company, etc. related to the consolidated corporation in the relevant business year exceeds the Amount of a Dividend payable corresponding to the capital contributions for the Base Business Year pertaining to the Amount of a Dividend, etc.: Where the Amount of a Dividend payable corresponding to the capital contributions for the relevant business year preceding the Base Business Year of the relevant Other Specified Foreign Subsidiary Company, etc. is appropriated to the Amount of a Dividend, etc. in reverse chronological order and the Amount of a Dividend, etc. has been categorized for the relevant business year in accordance with the Amount of a Dividend payable corresponding to the capital contributions for the relevant business year, the sum of the Amount of a Dividend, etc. to be appropriated with the Amount of a Dividend payable corresponding to the capital contributions for the business year during which the Individually Taxable Income or taxable income arises.
- (4) In the preceding paragraph and this paragraph, the meanings of the terms set forth in the following items are as prescribed respectively in those items:
- (i) amount of dividend payable: the amount that remains after deducting the sum of the amounts listed in (e) and (f) pertaining to the eligible income (meaning the eligible income prescribed in Article 68-90, paragraph (2), item (ii) of the Act; hereinafter the same applies in this item) of a specified foreign

subsidiary company, etc. for each business year, from the amount calculated by adding the eligible income to the sum of the amounts listed in (a) to (d) pertaining to the eligible income:

- (a) the amount listed in paragraph (1), item (iv) to be deducted pursuant to the provisions of paragraph (1) (limited to the part concerning item (iv)) or paragraph (2) (limited to the part concerning item (xvii));
- (b) the amount of deductible dividend, etc. prescribed in the preceding paragraph to be deducted pursuant to the provisions of the same paragraph;
- (c) in the case where the provisions of Article 68-88, paragraph (1) or Article 66-4, paragraph (1) of the Act are applied to a transaction with a consolidated corporation listed in the items of Article 68-90, paragraph (1) of the Act (including another consolidated corporation that has a consolidated full controlling interest with the consolidated corporation; the same applies in (c)) or a domestic corporation listed in the items of Article 66-6, paragraph (1), which pertains to the specified foreign subsidiary company, etc., and the amount to be reduced pursuant to the provisions of paragraph (1) or paragraph (2) contains any amount that is not paid to the consolidated corporation or the domestic corporation, the amount that is not paid;
- (d) the amount that accounts for ten percent of the amount of expenses specified by Cabinet Order as prescribed in Article 68-90, paragraph (2), item (ii) to be deducted pursuant to the provisions of the same item whose terms are replaced pursuant to the provisions of paragraph (3) of the same Article;
- (e) the amount payable due to the appropriation of surplus for the relevant business year (excluding the amount of corporate income tax and the Amount of a Dividend, etc.);
- (f) the amount paid as the expenses for the relevant business year (excluding the amount of corporate income tax and the Amount of a Dividend, etc.) which was included in the amount of eligible income for the relevant business year because the amount was not included in deductible expenses for calculating the amount of income pursuant to the provisions of paragraph (1) or paragraph (2) or was included in the amount of income pursuant to the provisions of the same paragraph;
- (ii) the Amount of a Dividend payable corresponding to the capital contributions: The amount obtained by multiplying the Amount of a Dividend payable by a specified foreign subsidiary company, etc. by the ratio of the number or the amount of the shares, etc. of the specified foreign subsidiary company, etc. that any other specified foreign subsidiary company, etc. (hereinafter referred to as the "Other Specified Foreign Subsidiary Company,

etc." in this item) holds out of the total Issued Shares, etc. of the specified foreign subsidiary company, etc. (where the specified foreign subsidiary company, etc. holds the Issued Shares, etc. in which claims prescribed in Article 66-6, paragraph (1) of the Act (hereinafter referred to as the "Claims" in this item and paragraph (2) of the following Article) with different contents are vested, or the shares, etc. in which Claims with different contents are deemed to be substantially vested (referred to as the "shares, etc. in which different claims are vested" in paragraph (2) of the following Article), the ratio of the Amount of a Dividend, etc. that the relevant Other Specified Foreign Subsidiary Company, etc. can receive based on the Claims out of the total Amount of a Dividend of surplus, etc.).

- (5) The amount obtained as a result of an adjustment for the amount of loss and base income prescribed in Article 68-90, paragraph (2), item (ii) of the Act is the amount that remains after deducting, from the base income amount prescribed in the same item for the relevant business year of a specified foreign subsidiary company, etc. (referred to as the "base income amount" in paragraph (7) and paragraph (8)), the sum of the amounts listed as follows (where the provisions of paragraph (3) of the same Article are applied, the amount obtained by adding the amount equivalent to ten percent of the amount of expenses specified by Cabinet Order prescribed in Article 68-90, paragraph (2), item (ii) of the Act whose terms are replaced under the provisions of paragraph (3) of the same Article):
- (i) the amount equivalent to the sum of the loss incurred in the business years that started within seven years prior to the first day of the relevant business year of the specified foreign subsidiary company, etc. (excluding the business years during which the company did not fall under the category of specified foreign subsidiary companies, etc. (including specified foreign subsidiary companies, etc. prescribed in Article 40-4, paragraph (1) or Article 66-6, paragraph (1) of the Act)) (that loss excludes the amount deducted in the business years preceding the relevant business year pursuant to the provisions of this paragraph or Article 39-15, paragraph (5));
  - (ii) the amount of corporate income tax that the specified foreign subsidiary company, etc. is to pay in the relevant business year (where there is any amount of corporate income tax to be refunded in the relevant business year, the amount that remains after deducting the amount of corporate income tax to be refunded).
- (6) A loss prescribed in item (i) of the preceding paragraph means a loss calculated where the provisions of paragraph (1), paragraph (2) or paragraph (3) are applied to the amount of income of a specified foreign subsidiary company, etc. in its settlement of accounts for the relevant business year.
- (7) When making a calculation set forth in paragraph (1), item (i), if there is any



amount to be included in deductible expenses in the relevant business year, pursuant to the provisions of Article 33 and Articles 42 to 53 of the Corporation Tax Act, and the provisions of Article 43, Article 45-2, Article 52-2, Article 57-5, Article 57-6, Article 57-8, Articles 65-7 to 65-9 (limited to the part pertaining to item (xix) of the table in Article 65-7, paragraph (1) of the Act), Article 67-12, paragraph (2) and Article 67-13, paragraph (2) of the Act, whose provisions are to be applicable under the provisions of the same item, the amount is to be included in deductible expenses for calculating the base income amount for the relevant business year, only when detailed statements concerning the inclusion of the amount in deductible expenses are attached to a consolidated final return form set forth in Article 68-90, paragraph (5) of the Act (hereinafter referred to as a "Consolidated Final Return Form" in the following paragraph) for the relevant business year; provided, however, that this does not apply when the competent district director having jurisdiction over the consolidated parent corporation's place for tax payment finds that there was unavoidable reason for the failure to attach detailed statements and the detailed statements have been submitted.

- (8) When calculating the base income amount pursuant to the provisions of paragraph (1) (limited to the part concerning item (iv)) or paragraph (2) (limited to the part concerning item (xvii)), if there is any amount to be deducted for the relevant business year pursuant to these provisions, the amount is deducted in the calculation of the base income amount of the business year only where a detailed statement concerning the calculation of the amount is attached to the Consolidated Final Return Form pertaining to the business year; provided, however, that this does not apply when the competent district director having jurisdiction over the place for tax payment of the consolidated parent corporation finds any unavoidable reason for the failure to attach the detailed statement, and the detailed statement is submitted.
- (9) Where a consolidated corporation, which was subject to the provisions of paragraph (1) for calculating the amount of income of the specified foreign subsidiary company, etc. in its settlement of accounts for the relevant business year, seeks the application of paragraph (2) for calculating the amount of income of the specified foreign subsidiary company, etc. in its settlement of accounts for the relevant business year in consolidated business years following the one to which the provisions of paragraph (1) have been applied; or where a consolidated corporation, which was subject to the provisions of paragraph (2) for calculating the amount of income of the specified foreign subsidiary company, etc. in its settlement of accounts for the relevant business year, seeks the application of paragraph (1) for calculating the amount of income of the specified foreign subsidiary company, etc. in its settlement of accounts for the relevant business year in consolidated business years

following the one to which the provisions of paragraph (2) have been applied, it must receive approval from the competent district director having jurisdiction over the consolidated parent corporation's place for tax payment, in advance.

(Calculation of the Amount of Individually Taxable Income of Specified Foreign Subsidiary Companies Related to Consolidated Corporations)

- Article 39-116 (1) The amount calculated as specified by Cabinet Order prescribed in Article 68-90, paragraph (1) of the Act is the amount obtained by multiplying the eligible income prescribed in the same paragraph for the relevant business year of a specified foreign subsidiary company, etc. pertaining to a consolidated corporation listed in the items of the same paragraph by the ratio of the shares, etc. for considering the Claims held by the consolidated corporation out of the Issued Shares, etc. of the specified foreign subsidiary company, etc. at the end of the relevant business year of the specified foreign subsidiary company, etc.
- (2) In the preceding paragraph and this paragraph, the meanings of the terms set forth in the following items are as prescribed respectively in those items:
- (i) the shares, etc. for considering the Claims held: The number or the amount adding together the number or the amount of the shares, etc. of a foreign corporation directly held by a consolidated corporation (where the foreign corporation holds the Issued Shares, etc. in which different Claims are vested, the number or the amount obtained by multiplying the Issued Shares, etc. of the foreign corporation by the ratio of the amount listed in Article 23, paragraph (1), item (i) of the Corporation Tax Act (referred to as the "Amount of a Dividend of surplus, etc." in (a) of the following item) that the consolidated corporation can receive based on the Claims out of the total amount) and the shares, etc. for considering the Claims indirectly held;
  - (ii) the shares, etc. for considering the Claims indirectly held: The number or the amount of the shares, etc. obtained by multiplying the Issued Shares, etc. of a foreign corporation by the ratio specified respectively in the following items for the category of cases listed in the relevant items (where falling under both of the following cases, the sum of the ratios specified respectively as follows):
    - (a) where a consolidated corporation holds the whole or a part of the Issued Shares, etc. of other foreign corporations which are shareholders, etc. (meaning shareholders, etc. prescribed in Article 2, item (xiv) of the Corporation Tax Act; hereinafter the same applies in (a)) of the foreign corporation (hereinafter the relevant other foreign corporations are simply referred to as "Other Foreign Corporations" in (a)): The ratio obtained by multiplying the consolidated corporation's ratio of shareholding (meaning the ratio of the number or the amount of the shares, etc. held by the

- shareholders, etc. out of the total Issued Shares, etc. of the corporation issuing the shares, etc. (where the issuing corporation holds the Issued Shares, etc. in which different Claims are vested, the ratio of the Amount of a Dividend of surplus, etc. that the shareholder, etc. can receive based on the Claims out of the total amount); hereinafter the same applies in this item) pertaining to the relevant Other Foreign Corporations by the relevant Other Foreign Corporations' ratio of shareholding pertaining to the foreign corporation (where there are two or more Other Foreign Corporations, the sum of the ratios calculated for each of them);
- (b) where a single foreign corporation or two or more foreign corporations intervene between the foreign corporation and any other foreign corporation (limited to any other foreign corporation, the whole or a part of whose Issued Shares, etc. are held by a consolidated corporation; hereinafter referred to as the "Other Foreign Corporation" in this item) (hereinafter that intervening foreign corporation is referred to as a "Capital Contribution-Related Foreign Corporation" in this item) and the consolidated corporation, the relevant Other Foreign Corporation, Capital Contribution-Related Foreign Corporation and the foreign corporation have a linkage through holding the shares, etc.: The ratio obtained by multiplying the consolidated corporation's ratio of shareholding pertaining to the relevant Other Foreign Corporation sequentially by the relevant Other Foreign Corporation's ratio of shareholding pertaining to the Capital Contribution-Related Foreign Corporation, by the capital contribution-related foreign corporation's ratio of shareholding pertaining to other Capital Contribution-Related Foreign Corporations, and by the capital contribution-related foreign corporation's ratio of shareholding pertaining to the foreign corporation (where there are two or more linkages, the sum of the ratios calculated for each of them).
- (3) The amount of expenses specified by Cabinet Order prescribed in Article 68-90, paragraph (2), item (ii) of the Act whose terms are replaced pursuant to the provisions of paragraph (3) of the same Article is the sum of personnel expense for officers and employees of a specified foreign subsidiary company, etc. engaged in the business at the specified foreign subsidiary company, etc. prescribed in paragraph (3) of the same Article (limited to the amount of income calculated in accordance with the Provisions of the Laws and Regulations of Japan prescribed in paragraph (1), item (i) of the preceding Article or pursuant to the provisions of paragraph (2) of the same Article or the amount to be included in deductible expenses for calculating the amount of a loss for the relevant business year of the specified foreign subsidiary company, etc.).

(Determination of Business of Specified Foreign Subsidiary Companies Related to Consolidated Corporations)

Article 39-117 (1) The person specified by Cabinet Order prescribed in Article 68-90, paragraph (4), item (i) of the Act is any of the following:

- (i) other consolidated corporations which have the consolidated full controlling interest with a consolidated corporation listed in the items of Article 68-90, paragraph (1) of the Act which pertains to a specified foreign subsidiary company, etc. prescribed in Article 68-90, paragraph (4) of the Act (hereinafter referred to as a "Specified Foreign Subsidiary Company, etc." in this paragraph) mainly engaged in the business listed in item (i) of the same paragraph;
- (ii) a person who holds over 50 percent of the total number or total amount of the Issued Shares, etc. of a consolidated corporation listed in the items of Article 68-90, paragraph (1) of the Act (where the consolidated corporation is a consolidated subsidiary corporation, a consolidated parent corporation related to the consolidated corporation) which pertains to a Specified Foreign Subsidiary Company, etc. mainly engaged in the business listed in Article 68-90, paragraph (4), item (i) of the Act (excluding a person falling under any of those listed in the items of Article 40-4, paragraph (1), items of Article 66-6, paragraph (1), items of Article 68-90, paragraph (1) of the Act and the preceding item who is related to the Specified Foreign Subsidiary Company, etc.);
- (iii) a person who holds over 50 percent of the total number or total amount of the Issued Shares, etc. of a domestic corporation listed in the items of Article 66-6, paragraph (1) of the Act which pertains to a Specified Foreign Subsidiary Company, etc. mainly engaged in the business listed in Article 68-90, paragraph (4), item (i) of the Act (excluding a person falling under any of those listed in the items of Article 40-4, paragraph (1), items of Article 66-6, paragraph (1), items of Article 68-90, paragraph (1) of the Act and the preceding two items who is related to the Specified Foreign Subsidiary Company, etc.);
- (iv) where a person listed in the items of Article 40-4, paragraph (1), items of Article 66-6, paragraph (1) or items of Article 68-90, paragraph (1) of the Act who is related to a Specified Foreign Subsidiary Company, etc. mainly engaged in the business listed in Article 68-90, paragraph (4), item (i) of the Act holds the shares, etc. indirectly pertaining to the Specified Foreign Subsidiary Company, etc. (the shares, etc. mean the number of shares or the amount of capital contributions of a foreign corporation specified by Cabinet Order as being held through indirect ownership as prescribed in Article 66-6, paragraph (2), item (iii) of the Act), the other foreign corporations prescribed in paragraph Article 39-16, paragraph (3), item (i) or the other foreign

- corporation and Capital Contribution-Related Foreign Corporation(s) prescribed in item (ii) of the same paragraph which pertain to the shares, etc. held indirectly;
- (v) a person who has a special relationship specified by Cabinet Order prescribed in Article 66-6, paragraph (2), item (vi) of the Act with any of the persons listed as follows (excluding a person falling under any of those listed in the items of Article 40-4, paragraph (1), items of Article 66-6, paragraph (1), items of Article 68-90, paragraph (1) of the Act and the preceding items who is related to a Specified Foreign Subsidiary Company, etc. mainly engaged in the business listed in Article 68-90, paragraph (4), item (i) of the Act):
- (a) a Specified Foreign Subsidiary Company, etc. mainly engaged in the business listed in Article 68-90, paragraph (4), item (i) of the Act;
  - (b) a person listed in the items of Article 40-4, paragraph (1), items of Article 66-6, paragraph (1) or items of Article 68-90, paragraph (1) of the Act who is related to a Specified Foreign Subsidiary Company, etc. mainly engaged in the business listed in Article 68-90, paragraph (4), item (i) of the Act;
  - (c) a person listed in the preceding items.
- (2) The case specified by Cabinet Order prescribed in Article 68-90, paragraph (4), item (i) of the Act is any of the cases specified respectively in the following items, in accordance with the category of the principal business to be conducted for the relevant business year of a specified foreign subsidiary company, etc. prescribed in the same paragraph:
- (i) wholesale business: where, out of the total revenue from selling inventory assets for the relevant business year (where there are any commissions to be received for agent or intermediary services for the buying or selling of inventory assets for the relevant business year, the revenues include the amount from the transactions for which the commissions were generated; hereinafter referred to as the "Amount of Sales Transactions" in this item), the ratio of the sum of the Amount of Sales Transactions with a person other than affiliated persons (meaning those listed in the items of Article 40-4, paragraph (1), items of Article 66-6, paragraph (1), items of Article 68-90, paragraph (1) of the Act and the preceding items who are related to the specified foreign subsidiary company, etc.; hereinafter the same applies in this paragraph and the following paragraph) exceeds 50 percent, or out of the sum of the acquisition costs for acquiring inventory assets for the relevant business year (where there are any commissions to be received for agent or intermediary services for the buying or selling of inventory assets for the relevant business year, the acquisition costs include the amount from the transactions for which the commissions were generated; hereinafter referred to as the "Amount of Purchase Transactions" in this item), the ratio of the

- sum of the Amount of Purchase Transactions with a person other than affiliated persons exceeds 50 percent;
- (ii) banking business: where, out of the sum of the total interest received for the relevant business year, the ratio of the sum of the interest to be received from a person other than affiliated persons exceeds 50 percent, or out of the sum of the total interest paid for the relevant business year, the ratio of the sum of the interest to be paid to a person other than affiliated persons exceeds 50 percent;
  - (iii) trust business: where, out of the sum of the total trust charge for the relevant business year, the ratio of the sum of the trust charge to be received from a person other than affiliated persons exceeds 50 percent;
  - (iv) financial instruments business: where, out of the sum of the total commissions received (including profits from the buying and selling of securities) for the relevant business year, the ratio of the sum of the commissions to be received from a person other than affiliated persons exceeds 50 percent;
  - (v) insurance business: where, out of the sum of the total premium income for the relevant business year, the ratio of the sum of the premium income to be received from a person other than affiliated persons (where the premium income pertains to reinsurance, limited to premium income from insurance for assets held by a person other than affiliated persons or damages incurred by a person other than affiliated persons) exceeds 50 percent;
  - (vi) water transportation business or air transportation business: where, out of the total revenue from the operation or rental of vessels or operation or rental of aircraft for the relevant business year, the ratio of the sum of the revenue to be received from a person other than affiliated persons exceeds 50 percent.
- (3) Where transactions prescribed in the preceding paragraph between a specified foreign subsidiary company, etc. and an affiliated person related to the specified foreign subsidiary company, etc. are conducted indirectly via a person other than an affiliated person related to the specified foreign subsidiary company, etc. (hereinafter referred to as a "Non-Affiliated Person" in this paragraph), transactions between the specified foreign subsidiary company, etc. and the Non-Affiliated Person are deemed to have been conducted directly between the specified foreign subsidiary company, etc. and the affiliated person and the provisions of the items of the preceding paragraph are applied, except in the case where there are reasonable grounds for having the Non-Affiliated Person intervene in the transactions.
- (4) The case specified by Cabinet Order prescribed in Article 68-90, paragraph (4), item (ii) of the Act is any of the cases specified respectively in the following items, in accordance with the category of the principal business to be conducted

for the relevant business year of a specified foreign subsidiary company, etc. prescribed in the same paragraph:

- (i) real estate business: where conducting a buying and selling or rental business of real estate (including acts to let others use the real estate) (real estate includes the rights thereon; hereinafter the same applies in this item) mainly located in the State of the Head Office, providing agent or intermediary services for the buying and selling or rental business of the real estate, and managing the real estate;
- (ii) rental and leasing business: where conducting a rental business for goods to be provided for use mainly in the State of the Head Office;
- (iii) business other than those listed in paragraph (2) and the preceding two items: where conducting a business mainly in the State of the Head Office.

(Calculation of Foreign Corporation Tax on Individually Taxable Income of Specified Foreign Subsidiary Companies)

Article 39-118 (1) The amount calculated as specified by Cabinet Order prescribed in Article 68-91, paragraph (1) of the Act is the amount obtained by multiplying the amount of foreign corporation tax to be imposed on a specified foreign subsidiary company, etc. prescribed in the same paragraph (hereinafter referred to as a "Foreign Subsidiary Company, etc." in this Article) on its income for a business year containing eligible income (meaning eligible income prescribed in Article 68-90, paragraph (2), item (ii) of the Act; hereinafter the same applies in this paragraph, and paragraph (1) and paragraph (2) of the following Article) (hereinafter referred to as a "Taxable Business Year" through to paragraph (4)) by the ratio of the Individually Taxable Income pertaining to a consolidated corporation prescribed in Article 68-91, paragraph (1) of the Act out of the eligible income for the relevant Taxable Business Year (where there is any amount listed in Article 39-115, paragraph (1), item (iv) to be deducted pursuant to the provisions of Article paragraph (1) (limited to the part concerning item (iv)) or paragraph (2) (limited to the part concerning item (xvii)) of the same Article or the amount of a deductible dividend, etc. prescribed in Article 39-115, paragraph (3) to be deducted pursuant to the provisions of the same paragraph, the amount obtained by adding these amounts) (where the amount exceeds the Individually Taxable Income, the amount equivalent to the Individually Taxable Income).

- (2) In the case where a Specified Foreign Subsidiary Company, etc. has been subject to two or more foreign corporation taxes or to a foreign corporation tax twice or more on its income for a Taxable Business Year, when a consolidated corporation related to the Specified Foreign Subsidiary Company, etc. seeks the application of the provisions of Article 68-91, paragraph (1) (including the cases where it is applied pursuant to the provisions of paragraph (2) of the

same Article by deeming the amount to be as specified therein; hereinafter the same applies in this Article) or Article 66-7, paragraph (1) (including the cases where it is applied pursuant to the provisions of paragraph (2) of the same Article by deeming the amount to be as specified therein; hereinafter the same applies in this Article) of the Act in two or more business years or consolidated business years; with respect to the application of the provisions of Article 68-91, paragraph (1) of the Act for a consolidated business year following the first one of those two or more consolidated business years or business years, the amount obtained by deducting the amount listed in item (ii) (the amount listed in item (iii), when seeking the application of the provisions of Article 68-91, paragraph (1) of the Act for the first time after receiving the application of the provisions of Article 66-7, paragraph (1) of the Act) from the amount listed in item (i) is deemed to be the calculated amount prescribed in the preceding paragraph:

- (i) the amount calculated pursuant to the provisions of the preceding paragraph regarding the sum of the amount of foreign corporation taxes that were imposed on income for the relevant Taxable Business Year by the final day of a consolidated business year subject to the provisions of Article 68-91, paragraph (1) of the Act (hereinafter referred to as the "Applicable Consolidated Business Year" in this paragraph) (that amount of foreign corporation taxes is limited to those to which the provisions of Article 68-91, paragraph (1) or Article 66-7, paragraph (1) of the Act were chosen to apply, pursuant to the provisions of paragraph (4) or Article 39-18, paragraph (4); hereinafter the same applies in this paragraph);
  - (ii) the amount calculated pursuant to the provisions of the preceding paragraph regarding the sum of the amount of foreign corporation taxes that were imposed on income for the relevant Taxable Business Year by the day preceding the first day of the Applicable Consolidated Business Year;
  - (iii) the amount calculated pursuant to the provisions of Article 39-18, paragraph (1) regarding the sum of the amount of foreign corporation taxes that were imposed on income for the relevant Taxable Business Year by the day preceding the first day of the Applicable Consolidated Business Year.
- (3) Out of the amount of foreign corporation taxes that were imposed on a Specified Foreign Subsidiary Company, etc. on its income for a Taxable Business Year, the amount deemed to be the amount of individually creditable foreign corporation taxes prescribed in Article 68-91, paragraph (1) of the Act that is paid by a consolidated corporation related to the Specified Foreign Subsidiary Company, etc., pursuant to the provisions of the same paragraph, (hereinafter referred to as the "Amount of Individually Creditable Foreign Corporation Taxes" in this Article) is deemed to be payable by the consolidated corporation in a consolidated business year specified respectively in the following items for the category of foreign corporation taxes listed in the



relevant item:

- (i) the foreign corporation tax that was imposed on the consolidated corporation on its income for the relevant Taxable Business Year of the Specified Foreign Subsidiary Company, etc. on or prior to the final day of the consolidated business year for which the provisions of Article 68-90, paragraph (1) of the Act are applied regarding the amount equivalent to the Individually Taxable Income for the relevant Taxable Business Year: The consolidated business year subject to the provisions of Article 68-90, paragraph (1) of the Act;
  - (ii) the foreign corporation tax that was imposed on the consolidated corporation on its income for the relevant Taxable Business Year of the Specified Foreign Subsidiary Company, etc. after the final day of the consolidated business year for which the provisions of Article 68-90, paragraph (1) of the Act are applied regarding the amount equivalent to the Individually Taxable Income for the relevant Taxable Business Year (where the provisions of Article 68-91, paragraph (2) of the Act are applied, after the final day of the business year for which the provisions of Article 66-6, paragraph (1) of the Act were applied regarding the amount equivalent to the taxable income prescribed in Article 66-6, paragraph (1) of the Act for the relevant Taxable Business Year): the consolidated business year involving the day on which the tax was imposed.
- (4) Where a Specified Foreign Subsidiary Company, etc. has been subject to two or more foreign corporation taxes or to a foreign corporation tax twice or more on its income for a Taxable Business Year, a consolidated corporation to which the provisions of Article 68-90, paragraph (1) of the Act are applied, regarding the amount equivalent to the Individually Taxable Income for the relevant Taxable Business Year of the Specified Foreign Subsidiary Company, etc., may choose whether or not it will seek the application of the provisions of Article 68-91, paragraph (1) of the Act regarding the amount of respective foreign corporation taxes on the Individually Taxable Income subject to the provisions of Article 68-90, paragraph (1) of the Act.
- (5) In the case where a consolidated corporation was subject to the provisions of Article 68-91, paragraph (1) of the Act, regarding the amount of foreign corporation tax imposed on the income of a Specified Foreign Subsidiary Company, etc. related to the consolidated corporation, when the amount of foreign corporation tax was reduced in each consolidated business year of the consolidated corporation which starts within seven years following the first day of the consolidated business year subject to the provisions of the same paragraph (hereinafter referred to as the "Applicable Consolidated Business Year" in this paragraph), it is deemed that the amount that remains after deducting the amount listed in item (ii) from the amount listed in item (i) has been reduced from the part of the amount of foreign corporation tax that was

deemed to be the amount of individually creditable foreign corporation tax payable by the consolidated corporation, pursuant to the provisions of paragraph (1) of the same Article, as on the day of the reduction of the foreign corporation tax:

(i) the part of the amount of foreign corporation tax that was deemed to be the amount of individually creditable foreign corporation tax payable by the consolidated corporation in the Applicable Consolidated Business Year;

(ii) the part that is deemed to be the amount of individually creditable foreign corporation tax payable by the consolidated corporation when the provisions of Article 68-91, paragraph (1) of the Act are applied in the Applicable Consolidated Business Year to the amount of foreign corporation tax after the reduction.

(6) In the case where a consolidated corporation was subject to the provisions of Article 66-7, paragraph (1) of the Act, regarding the amount of foreign corporation tax imposed on the income of a Specified Foreign Subsidiary Company, etc. related to the consolidated corporation, when the amount of foreign corporation tax was reduced in each consolidated business year of the consolidated corporation which starts within seven years following the first day of the business year subject to the provisions of the same paragraph (hereinafter referred to as the "Applicable Business Year" in this paragraph), it is deemed that the amount that remains after deducting the amount listed in item (ii) from the amount listed in item (i) has been reduced from the part of the amount of foreign corporation tax that was deemed to be the Amount of Creditable Foreign Corporation Tax payable by the consolidated corporation, pursuant to the provisions of paragraph (1) of the same Article (hereinafter referred to as the "Amount of Creditable Foreign Corporation Tax" in this Article), as on the day of the reduction of the foreign corporation tax:

(i) the part of the amount of foreign corporation tax that was deemed to be the Amount of Creditable Foreign Corporation Tax payable by the consolidated corporation in the Applicable Business Year;

(ii) the part that is deemed to be the Amount of Creditable Foreign Corporation Tax payable by the consolidated corporation when the provisions of Article 66-7, paragraph (1) of the Act are applied in the Applicable Business Year to the amount of foreign corporation tax after the reduction.

(7) Where the amount of individually creditable foreign corporation tax or creditable foreign corporation tax has been deemed to have been reduced, pursuant to the provisions of paragraph (5) or the preceding paragraph, the provisions of Article 81-15, paragraph (8) of the Corporation Tax Act are applied as specified in Article 155-35 (excluding paragraph (2)) of the Order for Enforcement of the Corporation Tax Act. In this case, in paragraph (1) of the same Article, the term "where the amount of foreign corporation tax to be paid

by a consolidated corporation" is deemed to be replaced with "where the amount of foreign corporation tax (including any part of the amount of foreign corporation tax to be imposed on the income of a Specified Foreign Subsidiary Company, etc. prescribed in Article 68-91, paragraph (1) of the Act on Special Measures Concerning Taxation (Credit for Foreign Tax on Individually Taxable Income of Specified Foreign Subsidiary Companies of Consolidated Corporations) or Article 66-7, paragraph (1) of the same Act (Credit for Foreign Tax on Taxable Income of Specified Foreign Subsidiary Companies of Domestic Corporations), which is deemed to be payable by the consolidated corporation pursuant to the provisions of Article 68-91, paragraph (1) or Article 66-7, paragraph (1) of the same Act; hereinafter the same applies in this paragraph) to be paid by a consolidated corporation"; the term "the amount of individually creditable foreign corporation tax that the consolidated corporation is to pay in the consolidated business year pertaining to the tax reduction (" is deemed to be replaced with "the amount of individually creditable foreign corporation tax that the consolidated corporation is to pay in the consolidated business year pertaining to the tax reduction (including any amount which is deemed to be payable by the consolidated corporation pursuant to the provisions of Article 68-91, paragraph (1) of the Act on Special Measures Concerning Taxation (including cases where applied mutatis mutandis by deeming the amount as prescribed in paragraph (2) of the same Article)"; and the term "the amount of individually reduced creditable foreign corporation tax" is deemed to be replaced with "the amount of individually reduced creditable foreign corporation tax (including the amount of individually creditable foreign corporation tax or creditable foreign corporation tax that is deemed to have been reduced pursuant to the provisions of Article 39-118, paragraph (5) or paragraph (6) (Reduction of Foreign Corporation Tax on Individually Taxable Income of Specified Foreign Subsidiary Companies) of the Order for Enforcement of the Act on Special Measures Concerning Taxation)".

- (8) Where there is any amount included in the gross profits pursuant to the provisions of Article 68-90, paragraph (1) of the Act for calculating the amount of consolidated income for the relevant consolidated business year of a consolidated corporation listed in the items of the same paragraph, the amount included in gross profits is to be included in the consolidated foreign income prescribed in the main clause of Article 155-28, paragraph (3) of the Order for Enforcement of the Corporation Tax Act for calculating the maximum amount of consolidated deduction prescribed in paragraph (1) of the same Article for the relevant consolidated business year of the consolidated corporation; provided, however, that in the case where the state of the head office of a Specified Foreign Subsidiary Company, etc. related to the consolidated corporation is a state or territory that does not impose any foreign corporation

taxes prescribed in Article 141, paragraph (1) of the same Order on income of the Specified Foreign Subsidiary Company, etc., the amount to be included in the consolidated foreign income is the amount equivalent to one-third of the amount included in the gross profits.

- (9) The part of the amount of foreign corporation taxes listed in the items of paragraph (3) that are deemed to be the amount of individually creditable foreign corporation tax payable by a consolidated corporation related to a Specified Foreign Subsidiary Company, etc., pursuant to the provisions of Article 68-91, paragraph (1) of the Act, is to be included in consolidated foreign income prescribed in the main clause of Article 155-28, paragraph (3) of the Order for Enforcement of the Corporation Tax Act for calculating the maximum amount of consolidated deduction prescribed in paragraph (1) of the same Article for a consolidated business year specified respectively in the relevant items of the consolidated corporation.
- (10) Out of the amount deemed to have been reduced from the amount of individually creditable foreign corporation tax or creditable foreign corporation tax, pursuant to the provisions of paragraph (5) or paragraph (6), the amount equivalent to the amount to be appropriated, pursuant to the provisions of paragraph (7), for deduction from the amount of individually creditable foreign corporation tax to be paid prescribed in Article 155-35, paragraph (1) of the Order for Enforcement of the Corporation Tax Act under the provisions of the same paragraph or for deduction from the amount exceeding the maximum amount of individual deduction prescribed in paragraph (3) of the same Article under the provisions of the same paragraph is to be included in deductible expenses for calculating the amount of consolidated income for a consolidated business year of a consolidated corporation prescribed in paragraph (5) or paragraph (6) for making the deduction. In this case, the amount to be included in deductible expenses is to be allocated as the amount of deductible expenses for calculating the amount of consolidated foreign income prescribed in the main clause of Article 155-28, paragraph (3) of the same Order.
- (11) The consolidated business year specified by Cabinet Order prescribed in Article 68-91, paragraph (3) of the Act is the consolidated business year specified respectively in the items of paragraph (3), in accordance with the category of the amount of foreign corporation tax imposed on the income of a Specified Foreign Subsidiary Company, etc.

(Calculation of the Specified Individually Taxable Income of Specified Foreign Subsidiary Companies)

- Article 39-119 (1) The amount specified by Cabinet Order as prescribed in Article 68-92, paragraph (3), item (i) of the Act is the amount obtained by multiplying the eligible income pertaining to a specified foreign subsidiary

company, etc. prescribed in the same item (hereinafter referred to as the "Specified Foreign Subsidiary Company, etc." in this Article) (limited to the eligible income pertaining to the Individually Taxable Income that is included in gross profits in the calculation of the amount of consolidated income of a consolidated corporation for a consolidated business year prescribed in the same item; hereinafter the same applies in this paragraph) by the ratio of the shares, etc. for considering the claims held directly by the consolidated corporation (meaning the shares, etc. for considering the claims held directly as prescribed in Article 39-19, paragraph (1); hereinafter the same applies in this Article) out of the Issued Shares, etc. of the Specified Foreign Subsidiary Company, etc. at the end of the relevant business year of the Specified Foreign Subsidiary Company, etc. pertaining to the eligible income.

- (2) The amount specified by Cabinet Order as prescribed in Article 68-92, paragraph (3), item (ii) of the Act is the total of the amount obtained by multiplying the eligible income for each business year of a Specified Foreign Subsidiary Company, etc. (limited to the eligible income pertaining to the Individually Taxable Income that is included in gross profits in the calculation of the amount of consolidated income of a consolidated corporation for each consolidated business year within the preceding ten years prescribed in the same item; hereinafter the same applies in this paragraph) by the ratio of the shares, etc. for considering the claims held directly by the consolidated corporation out of the Issued Shares, etc. of the Specified Foreign Subsidiary Company, etc. at the end of the relevant business year of the Specified Foreign Subsidiary Company, etc. pertaining to the eligible income.
- (3) With respect to the application of the provisions of Article 68-92, paragraph (3) of the Act in or after the consolidated business year containing the day of a qualified merger prescribed in paragraph (5) of the same Article (referred to as a "qualified merger, etc." in the following paragraph) of a consolidated corporation set forth in the same paragraph, in the case where the provisions of the same paragraph apply, the individually taxed amount of income specified in the items of the same paragraph (meaning the amount listed in paragraph (3), item (ii) of the same Article; hereinafter the same applies in this Article) or the taxed amount of income (meaning the amount listed in Article 66-8, paragraph (3), item (ii) of the Act; hereinafter the same applies in this Article) is deemed to be the individually taxed amount of income for a consolidated business year of the consolidated corporation specified respectively in the following items for the category of consolidated business years or business years listed in the relevant items of a merged corporation, split corporation, corporation making a capital contribution in kind, or corporation effecting post-formation acquisition of assets and/or liabilities (referred to as a "merged corporation, etc." in the following paragraph):

- (i) a business year within ten years prior to the merger prescribed in Article 68-92, paragraph (5), item (i) of the Act (hereinafter referred to as a "Business Year Within Ten Years Prior to the Merger" in this paragraph and the following paragraph) of a merged corporation pertaining to a qualified merger or a business year within ten years prior to the company split prescribed in paragraph (5), item (ii) of the same Article (hereinafter referred to as a "Business Year Within Ten Years Prior to the Company Split" through to paragraph (5)) of a split corporation pertaining to a qualified split-off-type company split (excluding a Business Year Within Ten Years Prior to the Merger or Business Year Within Ten Years Prior to the Company Split listed in the following item): The relevant consolidated business year of the consolidated corporation including the first day of a Business Year Within Ten Years Prior to the Merger of the merged corporation or the relevant consolidated business year of the consolidated corporation including the first day of a Business Year Within Ten Years Prior to the Company Split of the split corporation;
- (ii) a Business Year Within Ten Years Prior to the Merger of a merged corporation pertaining to a qualified merger that started on or after the first day of the consolidated business year containing the day of the qualified merger of the consolidated corporation (hereinafter referred to as the "Consolidated Business Year of the Merger" in this item) or a Business Year Within Ten Years Prior to the Company Split of a split corporation pertaining to a qualified split-off-type company split that started on or after the first day of the consolidated business year containing the day of the qualified split-off-type company split of the consolidated corporation (hereinafter referred to as the "Consolidated Business Year of the Split Succession" in this item): The consolidated business year containing the day preceding the first day of the Consolidated Business Year of the Merger or Consolidated Business Year of the Split Succession of the consolidated corporation;
- (iii) a business year within ten years prior to the company split, etc. prescribed in Article 68-92, paragraph (5), item (iii) of the Act (hereinafter referred to as a "Business Year Within Ten Years Prior to the Company Split, etc." in this Article) of a split corporation, etc. (meaning a split corporation, corporation making a capital contribution-in-kind, or corporation effecting post-formation acquisition of assets and/or liabilities; hereinafter the same applies in this paragraph and paragraph (6)) pertaining to a qualified spin-off-type company split, etc. (meaning a qualified spin-off-type company split, etc. prescribed in Article 68-92, paragraph (3), item (iii) of the Act; hereinafter the same applies in this paragraph and paragraph (6)) (excluding a Business Year Within Ten Years Prior to the Company Split when falling under the case

- listed in the following item and a Business Year Within Ten Years Prior to the Company Split, etc. listed in item (v)): The relevant consolidated business year of the consolidated corporation including the first day of a Business Year Within Ten Years Prior to the Company Split, etc. of the split corporation, etc.;
- (iv) a consolidated business year of a split corporation, etc. pertaining to a qualified spin-off-type company split, etc. that includes the day of the qualified spin-off-type company split, etc. or a Business Year Within Ten Years Prior to the Company Split, etc. of the split corporation, etc. where the first day of the business year falls before the first day of the consolidated business year of the consolidated corporation that includes the day of the qualified spin-off-type company split, etc.: The relevant consolidated business year of the consolidated corporation including the final day of a Business Year Within Ten Years Prior to the Company Split, etc. of the split corporation, etc.;
- (v) a Business Year Within Ten Years Prior to the Company Split, etc. of a split corporation, etc. pertaining to a qualified spin-off-type company split, etc. that started on or after the first day of a consolidated business year of the consolidated corporation including the day of the qualified spin-off-type company split, etc. (hereinafter referred to as the "Consolidated Business Year of the Split Succession, etc." in this item): The relevant consolidated business year of the consolidated corporation including the day preceding the first day of the Consolidated Business Year of the Split Succession, etc.
- (4) In the case where the first day of the oldest consolidated business year or business year out of the relevant consolidated business years or business years that started within ten years prior to the first day of the consolidated business year containing the day of a qualified merger, etc. of a consolidated corporation set forth in Article 68-92, paragraph (5) of the Act (hereinafter referred to as the "First Day of the Business Year of the Consolidated Corporation Ten Years before" in this paragraph) falls after the first day of the oldest consolidated business year or business year out of a Business Year Within Ten Years Prior to the Merger, Business Year Within Ten Years Prior to the Company Split or Business Year Within Ten Years Prior to the Company Split, etc. of a merged corporation(s), etc. pertaining to the qualified merger, etc. (hereinafter referred to as a "Business Year of the Merged Corporation(s), etc. Within the Preceding Ten Years" in this paragraph) (in the case of a qualified merger, etc. made among two or more merged corporations, etc., after the first day of the relevant consolidated business year or business year of the merged corporations, etc. whichever started the earliest; hereinafter referred to as the "First Day of the Business Year of the Merged Corporations, etc. Ten Years before" in this paragraph), the provisions of the preceding paragraph apply by deeming

respective periods classifying the period between the First Day of the Business Year of the Merged Corporations, etc. Ten Years before and the day preceding the First Day of the Business Year of the Consolidated Corporation Ten Years before (in the case where the consolidated corporation is to be established through the qualified merger, etc., the day preceding the first day of the consolidated business year of the consolidated corporation including the day of the qualified merger, etc.; hereinafter the same applies in this paragraph) by the corresponding Business Year of the Merged Corporation(s), etc. Within the Preceding Ten Years pertaining to the First Day of the Business Year of the Merged Corporations, etc. Ten Years before (for the period including the preceding day, the period between the first day of the consolidated business year or business year of the merged corporation, etc. including the preceding day and the day preceding the First Day of the Business Year of the Consolidated Corporation Ten Years before) to be the relevant consolidated business year of the consolidated corporation.

(5) The amount calculated as specified by Cabinet Order prescribed in Article 68-92, paragraph (5), item (ii) of the Act is the amount specified respectively in the following items for the category of the individually taxed amount of income or taxed amount of income listed in the relevant items:

(i) the individually taxed amount of income: The amount obtained by multiplying respectively the individually taxed amount of income for a Business Year Within Ten Years Prior to the Company Split of a split corporation pertaining to a qualified split-off-type company split by the ratio of the shares, etc. for considering the claims held directly that are listed in (b) out of the shares, etc. for considering the claims held directly that are listed in (a):

(a) the Specified Foreign Subsidiary Company, etc.'s shares, etc. for considering the claims held directly which the split corporation held immediately prior to the qualified split-off-type company split;

(b) the Specified Foreign Subsidiary Company, etc.'s shares, etc. for considering the claims held directly which are to be transferred from the split corporation to a consolidated corporation set forth in Article 68-92, paragraph (5) of the Act through the qualified split-off-type company split;

(ii) the taxed amount of income: The amount obtained by multiplying respectively the taxed amount of income for a Business Year Within Ten Years Prior to the Company Split of a split corporation pertaining to a qualified split-off-type company split by the ratio of the shares, etc. for considering the claims held directly that are listed in (b) out of the shares, etc. for considering the claims held directly that are listed in (a):

(a) the Specified Foreign Subsidiary Company, etc.'s shares, etc. for considering the claims held directly which the split corporation held



- immediately prior to the qualified split-off-type company split;
- (b) the Specified Foreign Subsidiary Company, etc.'s shares, etc. for considering the claims held directly which are to be transferred from the split corporation to a consolidated corporation set forth in Article 68-92, paragraph (5) of the Act through the qualified split-off-type company split.
- (6) The amount calculated as specified by Cabinet Order prescribed in Article 68-92, paragraph (5), item (iii) of the Act is the amount specified respectively in the following items for the category of the individually taxed amount of income or taxed amount of income listed in the relevant items:
- (i) the individually taxed amount of income: The amount obtained by multiplying respectively the individually taxed amount of income for a Business Year Within Ten Years Prior to the Company Split, etc. of a split corporation, etc. pertaining to a qualified spin-off-type company split, etc. by the ratio of the shares, etc. for considering the claims held directly that are listed in (b) out of the shares, etc. for considering the claims held directly that are listed in (a):
- (a) the Specified Foreign Subsidiary Company, etc.'s shares, etc. for considering the claims held directly which the split corporation, etc. held immediately prior to the qualified spin-off-type company split, etc.;
- (b) the Specified Foreign Subsidiary Company, etc.'s shares, etc. for considering the claims held directly which are to be transferred from the split corporation, etc. to a consolidated corporation set forth in Article 68-92, paragraph (5) of the Act through the qualified spin-off-type company split;
- (ii) the taxed amount of income: The amount obtained by multiplying respectively the taxed amount of income for a Business Year Within Ten Years Prior to the Company Split, etc. of a split corporation, etc. pertaining to a qualified spin-off-type company split, etc. by the ratio of the shares, etc. for considering the claims held directly that are listed in (b) out of the shares, etc. for considering the claims held directly that are listed in (a):
- (a) the Specified Foreign Subsidiary Company, etc.'s shares, etc. for considering the claims held directly which the split corporation, etc. held immediately prior to the qualified spin-off-type company split, etc.;
- (b) the Specified Foreign Subsidiary Company, etc.'s shares, etc. for considering the claims held directly which are to be transferred from the split corporation, etc. to a consolidated corporation set forth in Article 68-92, paragraph (5) of the Act through the qualified spin-off-type company split.
- (7) With regard to the application of the provisions of the Order for Enforcement of the Corporation Tax Act in the case where the provisions of Article 68-92, paragraph (1) of the Act apply, the phrase "of the Act" in Article 9-2, paragraph

(1), item (i), (b) of the same Order is deemed to be replaced with "of the Act and Article 68-92 (Exclusion from Gross Profits of Dividend of Surplus, etc. to be Received from Specified Foreign Subsidiary Company, etc.) of the Act on Special Measures Concerning Taxation)".

(8) With regard to the application of the provisions of the Order for Enforcement of the Corporation Tax Act in the case where the provisions of the first sentence of Article 68-92, paragraph (2) of the Act apply, in Article 9-2, paragraph (1), item (i), (b) of the same Order, the phrase "of the Act" is deemed to be replaced with "of the Act (including cases where applied following the deemed replacement of terms pursuant to the provisions of the first sentence of Article 66-8, paragraph (2) (Exclusion from Gross Profits of Dividend of Surplus, etc. to be Received from Specified Foreign Subsidiary Company, etc.) of the Act on Special Measures Concerning Taxation)", and the phrase "the same paragraph" is deemed to be replaced with "Article 81-3, paragraph (1) of the Act"; in Article 155-43, paragraph (2), item (ii) of the same Order, the phrase "of the Act" is deemed to be replaced with "of the Act (including cases where applied following the deemed replacement of terms pursuant to the provisions of the first sentence of Article 68-92, paragraph (2) (Exclusion from Gross Profits of Dividend of Surplus, etc. to be Received from Specified Foreign Subsidiary Company, etc.) of the Act on Special Measures Concerning Taxation)".

(Determination of Affiliated Foreign Companies)

Article 39-120 (1) In the case referred to in Article 68-90, paragraph (1) of the Act, whether or not a foreign company falls under the category of an affiliated foreign company prescribed in paragraph (2), item (i) of the same Article (hereinafter referred to as an "Affiliated Foreign Company" in this paragraph and the following paragraph) is to be determined according to its status at the end of the relevant business year of the foreign corporation and whether or not a consolidated corporation falls under the category of a consolidated corporation listed in the items of paragraph (1) of the same Article is determined according to its status at the end of the relevant business year of an Affiliated Foreign Company related to the consolidated corporation.

(2) Where a consolidated corporation listed in the items of Article 68-90, paragraph (1) of the Act has been dissolved through a merger by the day on which two months have elapsed after the final day of the relevant business year of an affiliated foreign company related to the consolidated corporation, the number of the shares, etc. of the affiliated foreign company prescribed in Article 66-6, paragraph (2), item (iii) of the Act which were directly and indirectly held by the consolidated corporation (hereinafter referred to as the "Number of Shares, etc. Directly and Indirectly Held" in this paragraph) and

which have been succeeded to by the merging corporation pertaining to the merger is deemed to be the Number of Shares, etc. Directly and Indirectly Held by the merging corporation on the final day of the relevant business year of the affiliated foreign company.

- (3) The amount included in the gross profits of a consolidated corporation subject to the provisions of Article 68-90, paragraph (1) of the Act, pursuant to the provisions of the same paragraph, is not to be included in the amount of consolidated income, etc. prescribed in the provisions of Article 81-13, paragraph (2) and paragraph (4) of the Corporation Tax Act for applying these provisions.
- (4) The amount included in the gross profits pursuant to the provisions of Article 68-90, paragraph (1) of the Act is not to be included in the amount of individual income prescribed in Article 9-2, paragraph (1), item (i), (a) of the Order for Enforcement of the Corporation Tax Act for calculating the amount of consolidated profit reserve of a consolidated corporation subject to the provisions of Article 68-90, paragraph (1) of the Act.
- (5) The provisions of Article 14-10, paragraphs (1) to (5) and paragraphs (7) to (11) of the Order for Enforcement of the Corporation Tax Act apply mutatis mutandis where the provisions of Article 68-90, paragraph (7) of the Act apply under the provisions of the same Article (excluding paragraph (3), paragraph (4) and paragraph (6)) to Article 68-93 of the Act, Articles 39-114 to 39-116 (excluding paragraph (3)), and Article 39-118 to this Article.
- (6) With regard to a trust corporation or a beneficiary of a trust subject to corporation taxation prescribed in Article 4-7 of the Corporation Tax Act, beyond what is specified in the preceding paragraph, other necessary particulars concerning the application of the provisions of Article 68-90 (excluding paragraph (3), paragraph (4) and paragraph (6)) to Article 68-93 of the Act, or the provisions of Articles 39-114 to 39-116 (excluding paragraph (3)), or Article 39-118 to this Article are specified by Ministry of Finance Order.

### **Section 28 Special Provisions for Taxation on Income of Specified Foreign Corporations Related to Consolidated Corporations That Are Specially-Related Shareholders**

(Scope of Specially-Related Shareholders)

Article 39-120-2 (1) An individual who has a special relationship specified by Cabinet Order prescribed in Article 68-93-2, paragraph (1) of the Act is any of the following:

- (i) an individual who has a special relationship prescribed in Article 4, paragraph (1) of the Order for Enforcement of the Corporation Tax Act with an individual falling under the category of a specified shareholder, etc.

- (meaning a specified shareholder, etc. prescribed in Article 68-93-2, paragraph (2), item (i) of the Act; hereinafter the same applies in the following item and item (i) of the following paragraph);
- (ii) an officer (meaning an officer prescribed in Article 2, item (xv) of the Corporation Tax Act; hereinafter the same applies in this paragraph and Article 39-120-4, paragraph (2)) of a corporation falling under the category of a specified shareholder, etc. and a person listed in the items of Article 72-3 of the Order for Enforcement of the Corporation Tax Act who is related to the officer (referred to as a "specially-related person" in the following item);
  - (iii) an officer of a specially-related domestic corporation (meaning a specially-related domestic corporation prescribed in Article 68-93-2, paragraph (2), item (ii) of the Act; hereinafter the same applies in this Section) and a specially-related person who is related to the officer.
- (2) A corporation which has a special relationship specified by Cabinet Order prescribed in Article 68-93-2, paragraph (1) of the Act is any of the following:
- (i) where a specified shareholder, etc. (including an individual who has a special relationship with the specified shareholder, etc. as prescribed in item (i) or item (ii) of the preceding paragraph) or an individual who has a special relationship with a specially-related domestic corporation as prescribed in item (iii) of the same paragraph (hereinafter referred to as a "Determined Shareholder, etc." in this paragraph) controls any other corporation, the relevant other corporation;
  - (ii) where a Determined Shareholder, etc. and a corporation which has a special relationship with the Determined Shareholder, etc. as prescribed in the preceding item control any other corporation, the relevant other corporation;
  - (iii) where a Determined Shareholder, etc. and a corporation which has a special relationship with the Determined Shareholder, etc. as prescribed in the preceding two items control any other corporation, the relevant other corporation.
- (3) The provisions of Article 4, paragraph (3) and paragraph (4) of the Order for Enforcement of the Corporation Tax Act apply mutatis mutandis where the provisions of the preceding paragraph apply.
- (4) The relationship specified by Cabinet Order prescribed in Article 68-93-2, paragraph (1) of the Act is the relevant relationship in the case where a specially-related shareholder, etc. prescribed in the same paragraph (hereinafter referred to as a "Specially-Related Shareholder, etc." in this Section) and a specially-related domestic corporation have a relationship where the ratio of the shares, etc. indirectly held by the Specially-Related Shareholder, etc. pertaining to the specially-related domestic corporation (meaning the ratio specified respectively in the following items for the category

of cases listed in the relevant items (where falling under both of the following cases, the sum of the ratios specified respectively as follows)) is 80 percent or more:

- (i) where out of the total number or total amount of shares or capital contributions issued by a foreign corporation (excluding that falling under the category of a Specially-Related Shareholder, etc.; hereinafter the same applies in this item) which is a shareholder, etc. (meaning a shareholder, etc. prescribed in Article 2, item (xiv) of the Corporation Tax Act; hereinafter the same applies in this Article) of a specially-related domestic corporation (the issued shares or capital contributions exclude those held on their own by the foreign corporation; and the total number or total amount of the issued shares or capital contributions is referred to as the "Issued Shares, etc." in this Section), a Specially-Related Shareholder, etc. holds 80 percent or more of the number or the amount of the shares, etc. (meaning shares or capital contributions; hereinafter the same applies in this Section): The ratio of the number or the amount of shares, etc. of a specially-related domestic corporation held by the foreign corporation which is a shareholder, etc. out of the total Issued Shares, etc. of the specially-related domestic corporation (where there are two or more the foreign corporations which are shareholders, etc., the sum of the ratios calculated for each of them);
- (ii) where a single corporation or two or more corporations intervene between a corporation which is a shareholder, etc. of a specially-related domestic corporation (excluding a foreign corporation which is a shareholder, etc. set forth in the preceding item falling under the case listed in the same item and a corporation falling under the category of a Specially-Related Shareholder, etc.) and a Specially-Related Shareholder, etc., and have a linkage with them through holding the shares, etc. (where the corporation which is a shareholder, etc. is a domestic corporation and the relevant single corporation is or two or more corporations are all domestic corporations, excluding the domestic corporations and the corporation falling under the category of a Specially-Related Shareholder, etc.; hereinafter referred to as a "Capital Contribution-Related Corporation" in this item) (limited to the case where 80 percent or more of the number or the amount of the Issued Shares, etc. of each of a Capital Contribution-Related Corporation and the corporation which is a shareholder, etc. are held by a Specially-Related Shareholder, etc. or a Capital Contribution-Related Corporation (the Specially-Related Shareholder, etc. or Capital Contribution-Related Corporation is limited to those 80 percent or more of the number or the amount of whose Issued Shares, etc. are held by a Specially-Related Shareholder, etc. or other Capital Contribution-Related Corporations)): The ratio of the number or the amount of the shares, etc. of a specially-related

- domestic corporation held by the corporation which is a shareholder, etc. out of the total Issued Shares, etc. of the specially-related domestic corporation (where there are two or more of those corporations which are shareholders, etc., the sum of the ratios calculated for each of them).
- (5) A foreign corporation specified by Cabinet Order prescribed in Article 68-93-2, paragraph (1) of the Act is any of the following:
- (i) a foreign corporation falling under the category of a foreign corporation which is a shareholder, etc. prescribed in item (i) of the preceding paragraph, where the ratio of the shares, etc. held indirectly as prescribed in the same paragraph is 80 percent or more;
  - (ii) a foreign corporation falling under the category of a foreign corporation which is a shareholder, etc. prescribed in item (ii) of the preceding paragraph where the ratio of the shares, etc. held indirectly as prescribed in the preceding paragraph is 80 percent or more and a foreign corporation falling under the category of a capital contribution-related corporation prescribed in the same item;
  - (iii) a foreign corporation, over 50 percent of the number or the amount of whose Issued Shares, etc. are held directly or indirectly by a foreign corporation listed in the preceding two items (excluding a foreign corporation falling under the category of a foreign corporation listed in the preceding two items and a foreign corporation falling under the category of a Specially-Related Shareholder, etc.).
- (6) In item (iii) of the preceding paragraph, whether or not a foreign corporation directly or indirectly holds over 50 percent of the Issued Shares, etc. is to be determined based on the sum of the ratio of the shares, etc. held directly by a foreign corporation listed in item (i) and item (ii) of the same paragraph pertaining to any other foreign corporation (excluding a foreign corporation falling under the category of a foreign corporation listed in item (i) or item (ii) of the same paragraph and a foreign corporation falling under the category of a Specially-Related Shareholder, etc.; hereinafter the same applies in this paragraph) (that ratio of the shares, etc. held directly means the ratio of the number or the amount of the shares, etc. of any other foreign corporation held by a foreign corporation listed in item (i) and item (ii) of the preceding paragraph out of the total Issued Shares, etc. of the relevant other foreign corporation) and the ratio of the shares, etc. held indirectly by a foreign corporation listed in item (i) and item (ii) of the same paragraph pertaining to the relevant other foreign corporation (the ratio of the shares, etc. held indirectly means the ratio specified respectively in the following items for the category of cases listed in the relevant items (where falling under both of the following cases, the sum of the ratios specified respectively as follows)):
- (i) where a foreign corporation listed in item (i) and item (ii) of the preceding

paragraph holds over 50 percent of the number or the amount of the Issued Shares, etc. of a foreign corporation which is a shareholder, etc. of the relevant other foreign corporation: The ratio of the number or the amount of the shares, etc. of the relevant other foreign corporation held by the foreign corporation which is a shareholder, etc. out of the total Issued Shares, etc. of the relevant other foreign corporation (where there are two or more of those foreign corporations which are shareholders, etc., the sum of the ratios calculated for each of them);

(ii) where a single foreign corporation or two or more foreign corporations intervene between a foreign corporation which is a shareholder, etc. of the relevant other foreign corporation (excluding a foreign corporation which is a shareholder, etc. set forth in the preceding item falling under the case listed in the same item) and a foreign corporation listed in item (i) and item (ii) of the preceding paragraph, and have a linkage with them through holding the shares, etc. (hereinafter referred to as a "Capital Contribution-Related Foreign Corporation" in this item) (limited to the case where over 50 percent of the number or the amount of the Issued Shares, etc. of each of a Capital Contribution-Related Foreign Corporation and the foreign corporation which is a shareholder, etc. are held by a foreign corporation listed in item (i) and item (ii) of the same paragraph or a Capital Contribution-Related Foreign Corporation(s) (the foreign corporation or Capital Contribution-Related Foreign Corporation is limited to those over 50 percent of the number or the amount of whose Issued Shares, etc. are held by a foreign corporation listed in item (i) and item (ii) of the same paragraph or other capital contribution-related corporations)): The ratio of the number or the amount of the shares, etc. of the relevant other foreign corporation held by the foreign corporation which is a shareholder, etc. out of the total Issued Shares, etc. of the relevant other foreign corporation (where there are two or more of those foreign corporations which are shareholders, etc., the sum of the ratios calculated for each of them).

(7) An affiliated foreign corporation specified by Cabinet Order prescribed in Article 68-93-2, paragraph (1) of the Act is any of the following:

(i) an affiliated foreign corporation (meaning an affiliated foreign corporation prescribed in Article 68-93-2, paragraph (1) of the Act; hereinafter the same applies in this Section) which has its head office or principal office in a state or territory where there are no taxes imposed on corporate income;

(ii) an affiliated foreign corporation whose tax to be imposed on its income for the relevant business year is 25 percent or less of the income.

(8) The provisions of Article 39-114, paragraph (2) apply mutatis mutandis to the determination as to whether or not an affiliated foreign corporation falls under the category of an affiliated foreign corporation set forth in item (ii) of the

preceding paragraph.

(Calculation of Eligible Income of Specified Foreign Corporations)

- Article 39-120-3 (1) The amount of undistributed income calculated in accordance with the standards specified by Cabinet Order prescribed in Article 68-93-2, paragraph (2), item (iii) of the Act is the amount calculated, pursuant to the provisions of Article 39-115, paragraph (1) or paragraph (2), or paragraph (3) of the same Article with regard to the income of a specified foreign corporation prescribed in Article 68-93-6, paragraph (1) of the Act (hereinafter referred to as a "Specified Foreign Corporation" in this Article and paragraph (1) of the following Article) in its settlement of accounts for the relevant business year.
- (2) The amount obtained as a result of an adjustment for the amount of loss and base income prescribed in Article 68-93-2, paragraph (2), item (iii) of the Act is the amount that remains after deducting, from the base income amount prescribed in the same item for the relevant business year of a Specified Foreign Corporation., the sum of the amounts listed as follows (where the provisions of paragraph (3) of the same Article are applied, the amount obtained by adding the amount equivalent to ten percent of the amount of expenses specified by Cabinet Order prescribed in Article 68-93-2, paragraph (2), item (iii) of the Act whose terms are replaced under the provisions of paragraph (3) of the same Article):
- (i) the amount equivalent to the sum of the loss incurred in the business years that started within seven years prior to the first day of the relevant business year of the Specified Foreign Corporation (excluding the business years that started before October 1, 2007 and the business years during which the corporation did not fall under the category of Specified Foreign Corporation (including Specified Foreign Corporation prescribed in Article 40-7, paragraph (1) or Article 66-9-2, paragraph (1) of the Act)) (that loss excludes the amount deducted in the business years preceding the relevant business year pursuant to the provisions of this paragraph or Article 39-20-3 paragraph (2));
- (ii) the amount of corporate income tax prescribed in Article 39-115, paragraph (1), item (ii) (hereinafter referred to as "Corporate Income Tax" in this item) that the Specified Foreign Corporation is to pay in the relevant business year (where there is any amount of Corporate Income Tax to be refunded in the relevant business year, the amount that remains after deducting the amount of Corporate Income Tax to be refunded).
- (3) A loss prescribed in item (i) of the preceding paragraph is a loss calculated with regard to the amount of income of a Specified Foreign Corporation in its settlement of accounts for the relevant business year, where the calculation



has been made pursuant to the provisions of paragraph (1).

- (4) The provisions of Article 39-115, paragraphs (7) to (9) apply *mutatis mutandis* where the amount of income of a Specified Foreign Corporation in its settlement of accounts for the relevant business year is calculated pursuant to the provisions of paragraph (1) or paragraph (2) of the same Article.

(Calculation of the Amount of Individually Taxable Income of Specified Foreign Corporations)

Article 39-120-4 (1) The amount calculated as specified by Cabinet Order prescribed in Article 68-93-2, paragraph (1) of the Act is the amount calculated with regard to the eligible income (meaning the eligible income prescribed in the same paragraph; hereinafter the same applies in this Section) for the relevant business year of a Specified Foreign Corporation related to a consolidated corporation which is a Specially-Related Shareholder, etc., pursuant to the provisions of Article 39-116, paragraph (1) and paragraph (2).

- (2) The amount of expenses specified by Cabinet Order set forth in Article 68-93-2, paragraph (2), item (iii) of the Act whose terms are replaced pursuant to the provisions of paragraph (3) of the same Article is the amount calculated with regard to the sum of personnel expenses for officers and employees of a Specified Foreign Corporation engaged in the business of the Specified Foreign Corporation prescribed in paragraph (3) of the same Article, pursuant to the provisions of Article 39-116, paragraph (3).

(Determination of Business of Specified Foreign Corporations)

Article 39-120-5 (1) The person specified by Cabinet Order prescribed in Article 68-93-2, paragraph (4), item (i) of the Act is any of the following:

- (i) other consolidated corporations which have the consolidated full controlling interest with a consolidated corporation falling under the category of a Specially-Related Shareholder, etc. which pertains to a specified foreign corporation prescribed in Article 68-93-2, paragraph (4), item (i) of the Act (hereinafter referred to as a "Specified Foreign Corporation" in this paragraph) mainly engaged in the business listed in item (i) of the same paragraph (the relevant other consolidated corporations exclude those falling under the category of Specially-Related Shareholders, etc. pertaining to the Specified Foreign Corporation);
- (ii) a person who holds over 50 percent of the number or the amount of the total Issued Shares, etc. of a corporation falling under the category of a Specially-Related Shareholder, etc. pertaining to a Specified Foreign Corporation mainly engaged in the business listed in Article 68-93-2, paragraph (4), item (i) of the Act (excluding a person falling under the category of a Specially-Related Shareholder, etc. pertaining to the Specified Foreign Corporation

- and a person falling under the category of persons listed in the preceding item);
- (iii) a person who holds over 50 percent of the number or the amount of the total Issued Shares, etc. of a consolidated corporation falling under the category of a Specially-Related Shareholder, etc. (where the consolidated corporation is a consolidated subsidiary corporation, a consolidated parent corporation related to the consolidated corporation) which pertains to a Specified Foreign Corporation mainly engaged in the business listed in Article 68-93-2, paragraph (4), item (i) of the Act (excluding a person falling under the category of a Specially-Related Shareholder, etc. pertaining to the Specified Foreign Corporation and a person falling under the category of persons listed in the preceding two items);
  - (iv) an affiliated foreign corporation related to a Specially-Related Shareholder, etc. pertaining to a Specified Foreign Corporation mainly engaged in the business listed in Article 68-93-2, paragraph (4), item (i) of the Act;
  - (v) a corporation which is a shareholder, etc. prescribed in Article 39-120-2, paragraph (4), item (ii) or capital contribution-related corporation(s) which intervene(s) between a specially-related domestic corporation and a Specially-Related Shareholder, etc. pertaining to a Specified Foreign Corporation mainly engaged in the business listed in Article 68-93-2, paragraph (4), item (i) of the Act (excluding a person falling under the category of persons listed in item (i) or the preceding item);
  - (vi) a person who has a special relationship specified by Cabinet Order prescribed in Article 68-93-2, paragraph (1) of the Act with those listed as follows (excluding a person falling under the category of a specially-related domestic corporation pertaining to a Specified Foreign Corporation mainly engaged in the business listed in paragraph (4), item (i) of the same Article, a person falling under the category of a Specially-Related Shareholder, etc. and a person falling under the category of persons listed in the preceding items):
    - (a) a Specified Foreign Corporation mainly engaged in the business listed in Article 68-93-2, paragraph (4), item (i) of the Act;
    - (b) a specially-related domestic corporation pertaining to a Specified Foreign Corporation mainly engaged in the business listed in Article 68-93-2, paragraph (4), item (i) of the Act;
    - (c) an individual or corporation falling under the category of a Specially-Related Shareholder, etc. pertaining to a Specified Foreign Corporation mainly engaged in the business listed in Article 68-93-2, paragraph (4), item (i) of the Act;
    - (d) those listed in the preceding items.
- (2) The provisions of Article 39-117, paragraph (2) and paragraph (3) apply mutatis mutandis to the case specified by Cabinet Order prescribed in Article

68-93-2, paragraph (4), item (i) of the Act. In this case, the term "those listed in the items of Article 40-4, paragraph (1), items of Article 66-6, paragraph (1), items of Article 68-90, paragraph (1) of the Act and the preceding items" in Article 39-117, paragraph (2), item (i) is deemed to be replaced with "a specially-related domestic corporation prescribed in Article 68-93-2, paragraph (2), item (ii) of the Act, Specially-Related Shareholder, etc. prescribed in paragraph (1) of the same Article and those listed in the items of Article 39-120-5, paragraph (1)".

- (3) The provisions of Article 39-117, paragraph (4) apply mutatis mutandis to the case specified by Cabinet Order prescribed in Article 68-93-2, paragraph (4), item (ii) of the Act.

(Calculation of Foreign Corporation Tax on Individually Taxable Income of Specified Foreign Corporations)

Article 39-120-6 (1) The amount calculated as specified by Cabinet Order prescribed in Article 68-93-3, paragraph (1) of the Act is the amount calculated, pursuant to the provisions of Article 39-118, paragraph (1), with regard to 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 paragraph (3)) to be imposed on a specified foreign corporation prescribed in Article 68-93-3, paragraph (1) of the Act (referred to as a "Specified Foreign Corporation" in paragraph (3)) on its income for a business year containing eligible income.

- (2) In the case where the provisions of Article 81-15, paragraphs (1) to (11) of the Corporation Tax Act are applied by deeming the calculated amount to be the amount of individually creditable foreign corporation tax prescribed in paragraph (1) of the same Article payable by a consolidated corporation that is a Specially-Related Shareholder, etc. pursuant to the provisions of Article 68-93-3, paragraph (1) of the Act, the particulars concerning the application of these provisions are as prescribed in the provisions of Article 39-118, paragraphs (2) to (10).

- (3) The consolidated business year specified by Cabinet Order prescribed in Article 68-93-3, paragraph (3) of the Act is the consolidated business year specified respectively in the items of Article 39-118, paragraph (3), in accordance with the category of the amount of foreign corporation tax imposed on the income of a Specified Foreign Corporation.

(Calculation of Specified Individual Taxable Amount of Specified Foreign Corporation)

Article 39-120-7 (1) The amount specified by Cabinet Order as prescribed in Article 68-93-4, paragraph (3), item (i) of the Act is the amount calculated in

accordance with the provisions of Article 39-119, paragraph (1) with regard to eligible income (limited to that which pertains to Individually Taxable Income prescribed in the same item that is included in gross profits in the calculation of the amount of consolidated income for a consolidated business year, prescribed in the same item, of a consolidated corporation which is a Specially-Related Shareholder, etc.) pertaining to a specified foreign corporation prescribed in the same item (referred to as a "Specified Foreign Corporation" in the following paragraph).

- (2) The amount specified by Cabinet Order as prescribed in Article 68-93-4, paragraph (3), item (ii) of the Act is the amount calculated in accordance with the provisions of Article 39-119, paragraph (2) with regard to eligible income (limited to that which pertains to Individually Taxable Income prescribed in the same item that is included in gross profits in the calculation of the amount of consolidated income for each consolidated business year within the preceding ten years, prescribed in the same item, of a consolidated corporation which is a Specially-Related Shareholder, etc.) for each business year of a Specified Foreign Corporation.
- (3) The particulars concerning the application of the provisions of Article 68-92, paragraphs (5) through (8) of the Act as applied mutatis mutandis pursuant to Article 68-93-4, paragraph (5) of the Act are as prescribed in the provisions of Article 39-119, paragraphs (3) through (6).
- (4) With regard to the application of the provisions of the Order for Enforcement of the Corporation Tax Act in the case where the provisions of Article 68-93-4, paragraph (1) of the Act apply, the phrase "(Inclusion in Deductible Expenses...)" in Article 9-2, paragraph (1), item (i), (b) and Article 155-43, paragraph (2), item (ii) of the same Order is deemed to be replaced with "(Inclusion in Deductible Expenses ...) of the Act or Article 68-93-4 (Exclusion from Gross Profits of Dividend of Surplus, etc. Received from Specified Foreign Corporation) of the Act on Special Measures Concerning Taxation)".
- (5) With regard to the application of the provisions of the Order for Enforcement of the Corporation Tax Act in the case where the provisions of the first sentence of Article 68-93-4, paragraph (2) of the Act apply, the phrase "(Exclusion of Gross Profit...) of the Act" in Article 9-2, paragraph (1), item (i), (b) of the same Order is deemed to be replaced with "(Exclusion of Gross Profit ...) of the Act (including the case where it is applied following the deemed replacement of terms pursuant to the provisions of the first sentence of Article 68-93-4, paragraph (2) (Exclusion from Gross Profits of Dividend of Surplus, etc. Received from Specified Foreign Corporation) of the Act on Special Measures Concerning Taxation)"; and the phrase "the same paragraph" in the same item (b) is deemed to be replaced with "Article 81-3, paragraph (1) of the Act"; and the phrase "(Exclusion of Gross Profit...) of the Act" in Article

155-43, paragraph (2), item (ii) of the same Order is deemed to be replaced with "(Exclusion of Gross Profit ...) of the Act (including the case where it is applied following the deemed replacement of terms pursuant to the provisions of the first sentence of Article 68-93-4, paragraph (2) (Exclusion from Gross Profits of Dividend of Surplus, etc. Received from Specified Foreign Corporation) of the Act on Special Measures Concerning Taxation)".

(Determination of Specified Relationship)

Article 39-120-8 (1) The provisions of Article 39-20-8, paragraph (1) and paragraph (2) apply mutatis mutandis where the provisions of Article 68-93-2, paragraph (1) of the Act apply.

(2) Where a consolidated corporation which is a Specially-Related Shareholder, etc. pertaining to a specially-related domestic corporation has been dissolved through a merger by the day on which two months have elapsed after the final day of the relevant business year of an affiliated foreign corporation related to the consolidated corporation, the number of the shares, etc. of the affiliated foreign corporation prescribed in Article 66-9-2, paragraph (2), item (iv) of the Act which were directly and indirectly held by the consolidated corporation (hereinafter referred to as the "Number of Shares, etc. Directly and Indirectly Held" in this paragraph) and which have been transferred to the merging corporation pertaining to the merger (the merging corporation is limited to one falling under the category of a Specially-Related Shareholder, etc. related to the specially-related domestic corporation and one that proves to fall under the category of a Specially-Related Shareholder, etc. related to the specially-related domestic corporation by receiving the transfer of the number of the shares, etc. of the affiliated foreign corporation directly and indirectly held by the consolidated corporation through the merger; hereinafter the same applies in this paragraph) is deemed to be the Number of Shares, etc. Directly and Indirectly Held by the merging corporation on the final day of the relevant business year of the affiliated foreign corporation.

(3) The provisions of Article 39-120, paragraph (3) and paragraph (4) apply mutatis mutandis to the application of the provisions of Article 81-13, paragraph (2) and paragraph (4) of the Corporation Tax Act and the calculation of the amount of consolidated profit reserve of a consolidated corporation which is a Specially-Related Shareholder, etc., where there is any amount included in gross profits of the consolidated corporation pursuant to the provisions of Article 68-93-2, paragraph (1) of the Act.

(4) The provisions of Article 14-10, paragraphs (1) to (5) and paragraphs (7) to (11) of the Order for Enforcement of the Corporation Tax Act apply mutatis mutandis where the provisions of Article 68-93-2, paragraph (8) of the Act apply under the provisions of the same Article (excluding paragraph (3),

paragraph (4) and paragraph (6)) to Article 68-93-5 of the Act, Articles 39-120-2 to 39-120-4 (excluding paragraph (2)), and Article 39-120-6 to this Article.

- (5) With regard to a trust corporation or a beneficiary of a trust subject to corporation taxation prescribed in Article 4-7 of the Corporation Tax Act, beyond what is specified in the preceding paragraph, other necessary particulars concerning the application of the provisions of Article 68-93-2 (excluding paragraph (3), paragraph (4) and paragraph (6)) to Article 68-93-5 of the Act, Articles 39-120-2 to 39-120-4 (excluding paragraph (2)), or Article 39-120-6 to this Article are specified by Ministry of Finance Order.

### **Section 29 Other Special Provisions for Consolidated Corporations**

(Special Provisions for Taxation on Shareholders in Cases of Specified Merger)

Article 39-128 (1) The provisions of Article 119-7-2, paragraph (1) of the Order for Enforcement of the Corporation Tax apply mutatis mutandis to the relationship specified by Cabinet Order as prescribed in Article 68-109-2, paragraph (1) of the Act, and the provisions of Article 119-7-2, paragraph (3) of the same Order apply mutatis mutandis to the relationship specified by Cabinet Order as prescribed in Article 68-109-2, paragraph (3) of the Act respectively.

- (2) Where a consolidated parent corporation or a consolidated subsidiary corporation in which the consolidated parent corporation has a consolidated full controlling interest, has received, as a result of a merger (limited to a merger that does not fall under the category of qualified merger) of a domestic corporation which issued old shares (meaning shares (including capital contributions; hereinafter the same applies in this Article) that were held by those corporations), the delivery of shares of a foreign corporation which has a relationship specified by Cabinet Order as prescribed in Article 68-109-2, paragraph (1) of the Act, when the shares of the foreign corporation fall under the category of shares of a specified foreign corporation with less tax burden (meaning a specified foreign corporation with less tax burden prescribed in Article 68-2-3, paragraph (5), item (i) of the Act; the same applies in paragraph (4)), with regard to the acquisition cost of the shares thus delivered, the provisions of Article 119, paragraph (1), item (v) of the Order for Enforcement of the Corporation Tax Act in the case of calculating the amount of individual gross profits or amount of individual deductible expenses prescribed in Article 81-3, paragraph (1) of the Corporation Tax Act pursuant to the provisions of the same paragraph do not apply.

- (3) Where a consolidated parent corporation or a consolidated subsidiary corporation, in which the consolidated parent corporation has a consolidated full controlling interest, has received, as a result of a specified split-off-type

company split prescribed in Article 68-109-2, paragraph (2) of the Act which is effected by a domestic corporation that issued old shares (meaning shares that were held by those corporations), the delivery of shares of a specified foreign parent corporation prescribed in the same paragraph pertaining to a succeeding corporation in a company split, with regard to the acquisition cost of the shares thus delivered, the provisions of Article 119, paragraph (1), item (vi) of the Order for Enforcement of the Corporation Tax Act in the case of calculating the amount of individual gross profits or amount of individual deductible expenses prescribed in Article 81-3, paragraph (1) of the Corporation Tax Act pursuant to the provisions of the same paragraph do not apply.

- (4) Where a consolidated parent corporation or a consolidated subsidiary corporation, in which the consolidated parent corporation has a consolidated full controlling interest, has received, as a result of a share exchange (limited to the share exchange that does not fall under category of qualified share exchange) which is effected by a domestic corporation that issued old shares (meaning shares that were held by those corporations), the delivery of shares of a foreign parent corporation which has a relationship specified by Cabinet Order as prescribed in Article 68-109-2, paragraph (3) of the Act, and where the shares of the foreign corporation fall under the category of shares of a specified foreign corporation with less tax burden, with regard to the acquisition cost of the shares thus delivered, the provisions of Article 119, paragraph (1), item (viii) of the Order for Enforcement of the Corporation Tax Act in the case of calculating the amount of individual gross profits or amount of individual deductible expenses prescribed in Article 81-3, paragraph (1) of the Corporation Tax Act pursuant to the provisions of the same paragraph do not apply.

(Special Provisions for Taxation on Distribution of Profit from Special Purpose Trust to Be Received by Consolidated Corporation)

Article 39-129 The amount specified by Cabinet Order as prescribed in Article 68-110, paragraph (2) of the Act is the amount of the distribution of profit from a foreign special purpose trust prescribed in Article 68-3-2, paragraph (10) of the Act (limited to the amount up to the specified individual taxable income prescribed in Article 68-92, paragraph (3) of the Act or the amount up to the specified individual taxable income prescribed in Article 68-93-4, paragraph (3) of the Act) to be received from a specified foreign subsidiary company, etc. prescribed in Article 68-90, paragraph (1) of the Act (limited to those falling under the category of foreign subsidiary company prescribed in Article 23-2, paragraph (1) of the Corporation Tax Act) or a specified foreign corporation prescribed in Article 68-93-2, paragraph (1) of the Act (limited to those falling

under the category of foreign subsidiary company prescribed in Article 23-2, paragraph (1) of the Corporation Tax Act).

(Special Provisions for Taxation on Distribution of Proceeds from Special Investment Trust to Be Received by Consolidated Corporation)

Article 39-130 The amount specified by Cabinet Order as prescribed in Article 68-111, paragraph (2) of the Act is the amount of the distribution of proceeds from a foreign special investment trust prescribed in Article 68-3-3, paragraph (10) of the Act (limited to the amount up to the specified individual taxable income prescribed in Article 68-92, paragraph (3) of the Act or the amount up to the specified individual taxable income prescribed in Article 68-93-4, paragraph (3) of the Act) to be received from a specified foreign subsidiary company, etc. prescribed in Article 68-90, paragraph (1) of the Act (limited to those falling under the category of foreign subsidiary company prescribed in Article 23-2, paragraph (1) of the Corporation Tax Act) or a specified foreign corporation prescribed in Article 68-93-2, paragraph (1) of the Act (limited to those falling under the category of foreign subsidiary company prescribed in Article 23-2, paragraph (1) of the Corporation Tax Act).