

BEPS Action Plan & Japan Tax Reform 2015

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Brief History of International Taxation

1899	Conclusion of first double taxation treaty concluded between Prussia and Austria - Hungary
1920's ~1930's	The League of Nations proposed fundamental rules for international taxation, including resident/source countries, permanent establishment, and arm's length principle developed in Model Tax Treaty.
1963	The OECD adopted "Draft Double Taxation Convention on Income and Capital."
1968	The UN established "the Ad Hoc Group of Experts on Tax Treaties between Developed and Developing Countries."
1979	The OECD published "Transfer pricing and Multinational Enterprises (TP Guideline)."
1980	The UN finalized "the United Nations Model Double Taxation Convention between Developed and Developing Countries."
1995	The revised TP Guideline reaffirmed the ALP Principal.
1998	The OECD submitted "Harmful Tax Competition – An Emerging Global Issue."
2000	The OECD published a list of harmful tax practices and tax haven.
2005	The OECD updated the OECD Model Tax Convention, including an article on exchange of information.
2008	"Lehman Shock" reemphasize the importance of transparency and exchange of information for tax purposes.
2009	The Global forum was restructured to strengthen implementation of international standards for exchange of information.
2012	The OECD launched the BEPS Project. In response to mounting criticism against tax avoidance by multinational enterprises, G20 reaffirmed the necessity to tackle with base erosion and profit shifting.
2013	The OECD published the BEPS Action Plan endorsed by G8/G20 leaders.
2014	The first set of deliverables of the BEPS Action Plan was published. G20 Leaders welcomed the progress made



G20 Finance Ministers and Central Bank Governors Communique (Excerpt) (Sep. 20-21, 2014, @Cairns, Australia)

8. We are strongly committed to a global response to cross-border tax avoidance and evasion so that the tax system supports growth-enhancing fiscal strategies and economic resilience. Today, we welcome the significant progress achieved towards the completion of our two-year G20/OECD Base Erosion and Profit Shifting (BEPS) Action Plan and commit to finalising all action items in 2015. We endorse the finalised global Common Reporting Standard for automatic exchange of tax information on a reciprocal basis which will provide a step-change in our ability to tackle and deter cross-border tax evasion. We will begin exchanging information automatically between each other and with other countries by 2017 or end-2018, subject to the completion of necessary legislative procedures.

G20 Leaders' Communique (Excerpt) (Nov. 15-16, 2014, @Brisbane, Australia)

13. We are taking actions to ensure the fairness of the international tax system and to secure countries' revenue bases. Profits should be taxed where economic activities deriving the profits are performed and where value is created. We welcome the significant progress on the G20/OECD Base Erosion and Profit Shifting (BEPS) Action Plan to modernise international tax rules. We are committed to finalising this work in 2015, including transparency of taxpayer-specific rulings found to constitute harmful tax practices. We welcome progress being made on taxation of patent boxes. To prevent cross-border tax evasion, we endorse the global Common Reporting Standard for the automatic exchange of tax information (AEOI) on a reciprocal basis. We will begin to exchange information automatically with each other and with other countries by 2017 or end-2018, subject to completing necessary legislative procedures. We welcome financial centres' commitments to do the same and call on all to join us

G20 Finance Ministers and Central Bank Governors Communique (Excerpt) **(Feb. 9-10, 2015, @Istanbul, Turkey)**

11. We reiterate our full support to the G20/OECD Base Erosion and Profit Shifting (BEPS) Project, showing our resolve to tackle cross-border tax avoidance by modernizing international tax rules. We will finalize the deliverables under the BEPS Action Plan by year-end. We endorse the mandate to develop a multilateral instrument to streamline the implementation of the tax treaty-related BEPS measures. We also reaffirm our commitment to strengthen tax transparency to prevent cross-border evasion. With respect to the exchange of information on request, we urge all jurisdictions to fully comply with the Global Forum standards and join the Multilateral Convention on Mutual Administrative Assistance in Tax Matters. We will work towards completing the necessary legislative procedures to begin the automatic exchange of information (AEOI) within the agreed timeframe. We look forward to the practical and full implementation of the new standard on a global scale and reiterate our commitment to making AEOI attainable by all countries, including all financial centers, and support the pilot projects. We welcome the direct engagement of developing countries in the BEPS Project ensuring that their concerns are addressed and acknowledge that their timing of application may differ from other countries. We will closely monitor progress in preparation of toolkits to assist developing countries in implementing the BEPS actions. We will continue to support developing countries in strengthening their capacity. We will implement the G20 High-Level Principles on Beneficial Ownership Transparency.

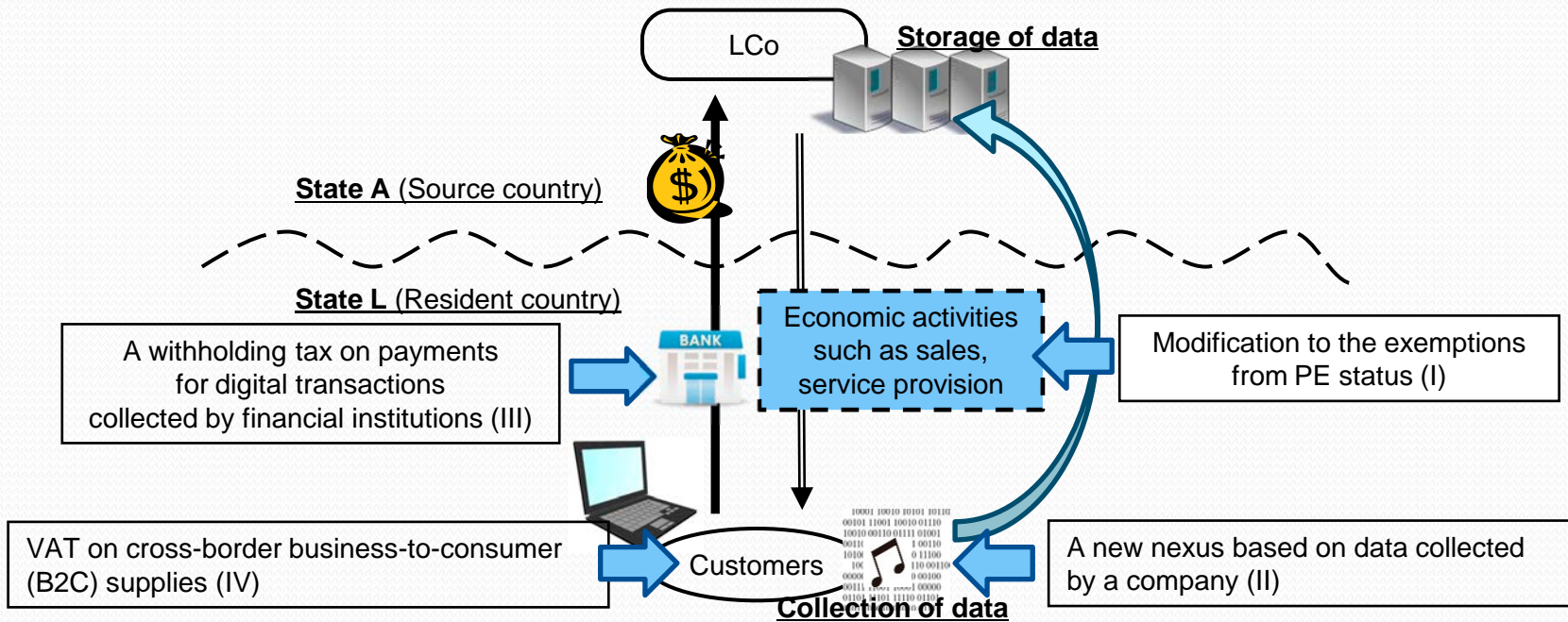
Japan Tax Reform 2015~Addressing BEPS

Action 1 Address the tax challenges of the digital economy

【Challenge】 A company can have a significant digital presence in the economy of another country without being liable to taxation due to the lack of nexus under current international rules.

【Measure】 4 options for addressing the challenge in digital economy mentioned above

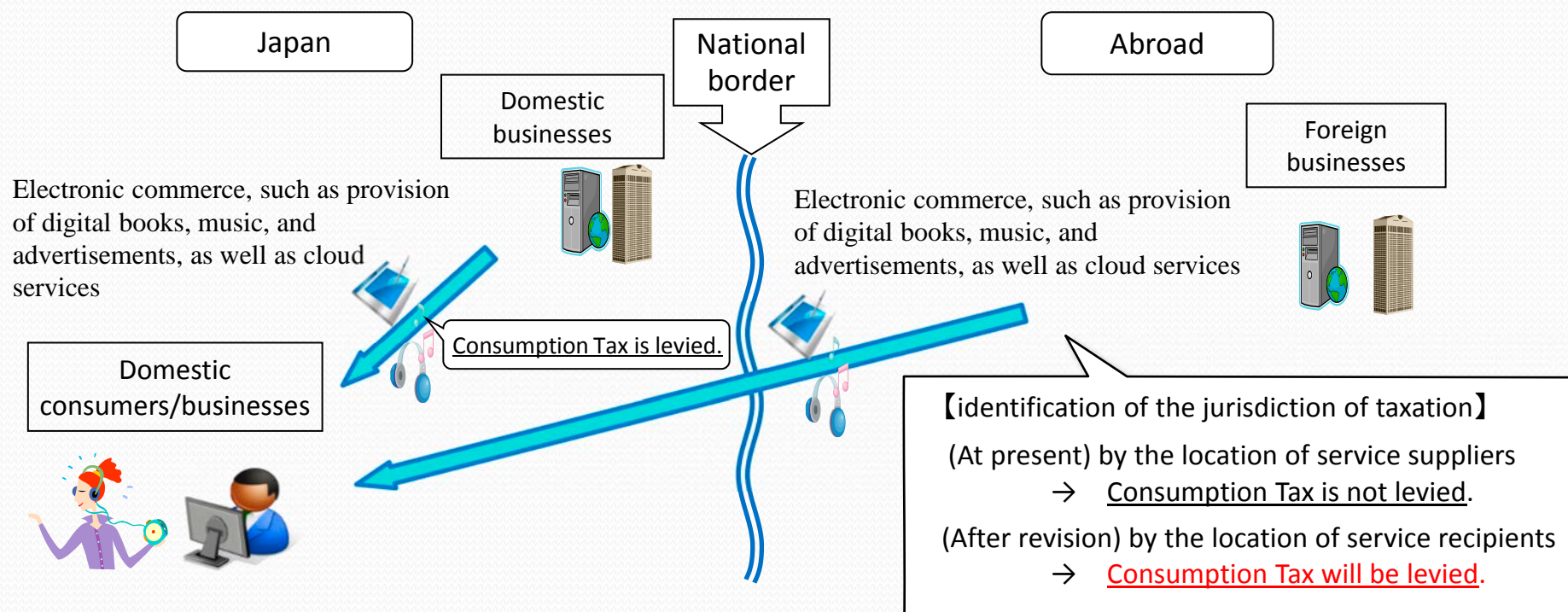
- I. Modifications to the exemptions from PE status in digital economy
- II. A new nexus based on data collected by a company
- III. Creation of a withholding tax on payments for digital transactions collected by financial institutions
- IV. VAT on cross-border business-to-consumer (B2C) supplies



Revision of consumption taxation on cross-border supplies of services

- Extend the coverage of Japan Consumption Tax to cross-border supplies of electronic commerce by foreign businesses, such as the provision of digital books, music and advertisements, in order to ensure competitive equality between domestic and foreign businesses – effective on October 1, 2015.
- As to taxation on cross-border supplies of services other than electronic commerce, will conduct further deliberations while taking into account discussions at the OECD.

(Note) electronic commerce : services supplied via electric and telecommunication networks, excluding those ancillary to other transactions.



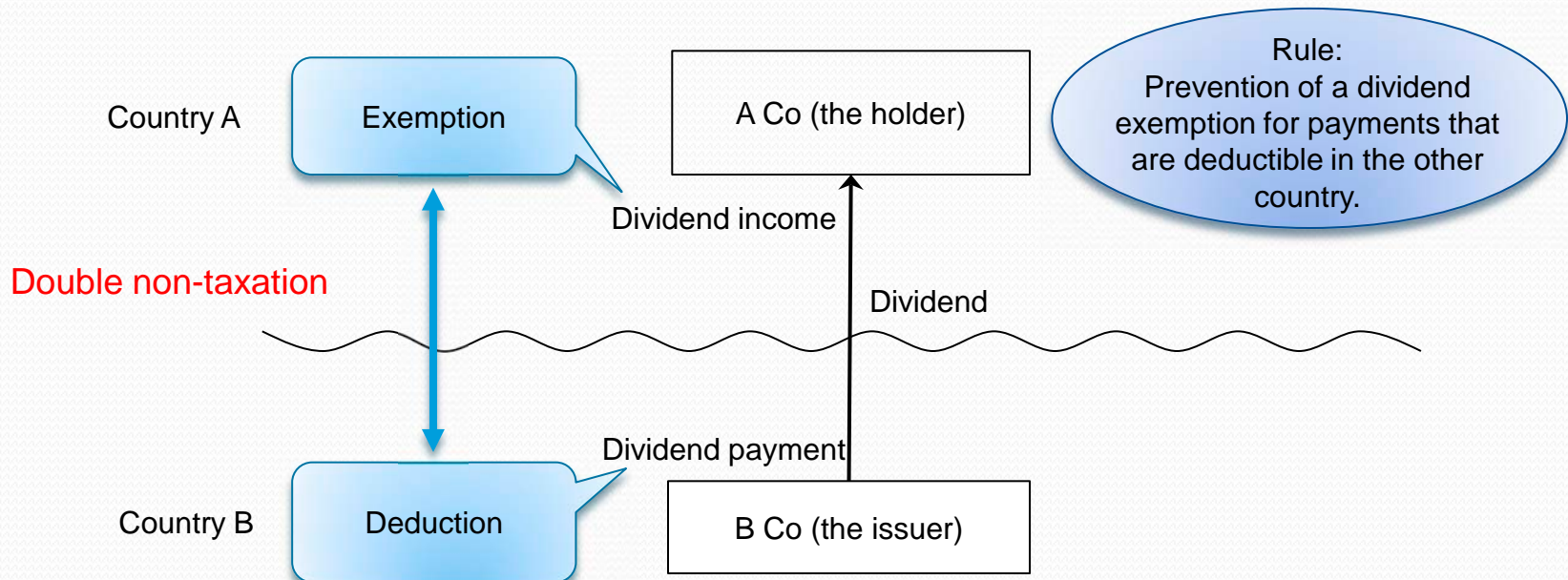
Action 2 Neutralize the effects of hybrid mismatch arrangements

【Challenge】 Hybrid financial instruments, such as a financial instrument treated by the issuer as debt and by the holder as equity, can cause mismatches which result in tax deduction as well as dividend exemption (D/Ni outcome).

【Measure】 A country that provides for dividend exemption specifically to relieve economic double taxation on distributed profit should prevent such exemption for payments that are deductible in the other country.

Note: The 2014 report also proposes other counter measures that tackle other cases which can produce double non-taxation.

<Hybrid financial instrument <treated by the issuer as debt, by the holder as equity>



Revision of foreign dividend exclusion system (FY2015 Tax Reform)

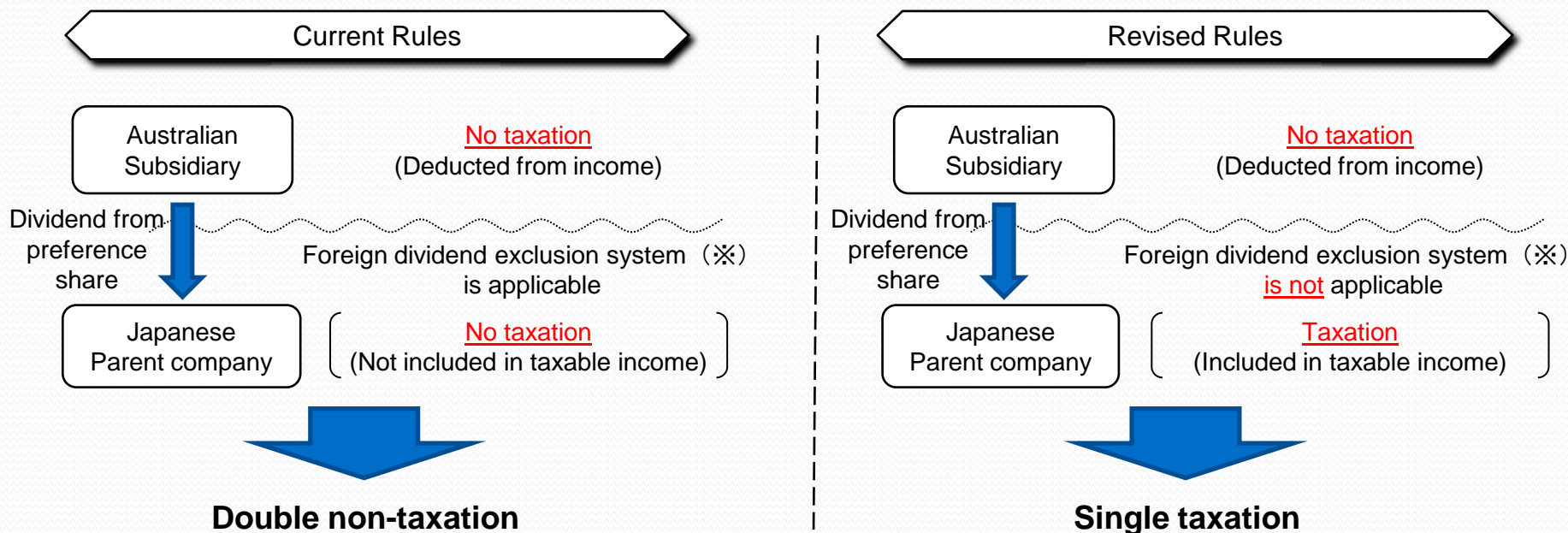
【Outline】

In response to the recommendation made in the 2014 deliverable in relation to Action 2, exclude dividends deductible from the gross profits of the paying foreign subsidiaries (ex: Mandatory Redeemable Preference Shares (Australia)) from the scope of foreign dividend exclusion system (=prevent double non-taxation).

【Detail】

- Applied in fiscal years beginning after Apr. 1st, 2016.
- Not applicable to dividends:
 - Received in fiscal years beginning between Apr. 1st, 2016 and Mar. 31st, 2018; and
 - Related to stocks held at Apr. 1st, 2016.

【Case of Australian Mandatory Redeemable Preference Shares】



(※) Special tax treatment which excludes dividend paid out of profit of foreign subsidiaries to Japanese parent company from taxable income of the parent company. (Note: Taking into account the cost for earning dividend, 95% of dividend amount is excluded from taxable income.)

Action 5 Counter harmful tax practices

Background and Outline

- Since the 1998 Report on harmful tax competition, the OECD has encouraged jurisdictions to abolish “harmful regimes” which target at and attract mobile income.
 - (*) Identify preferential regimes harmful if those regimes:
 - (a) apply no or low tax rate to mobile income which is derived from financial and other service activities; and
 - (b) only targeted at foreign enterprises.
 - Based on current criteria, it is difficult to determine the harmfulness of the preferential regimes which ensure equal treatment of domestic and foreign activities.
- **Elaborate and expand criteria for reviewing harmful regimes.**

Elaboration and expansion of criteria for reviewing

(I) Substantial activity criteria

Require patent box regimes (*) to apply their preferential treatment in proportion to the extent of R&D activities of taxpayers receiving benefits.

(*) Regimes that provide for a tax preference on income relating to intangible property such as patents.

(II) Transparency criteria

A tax authority providing tax rulings (*) which affect tax bases of other countries is required to spontaneously exchange information on those rulings with the authorities of those countries which are potentially affected.

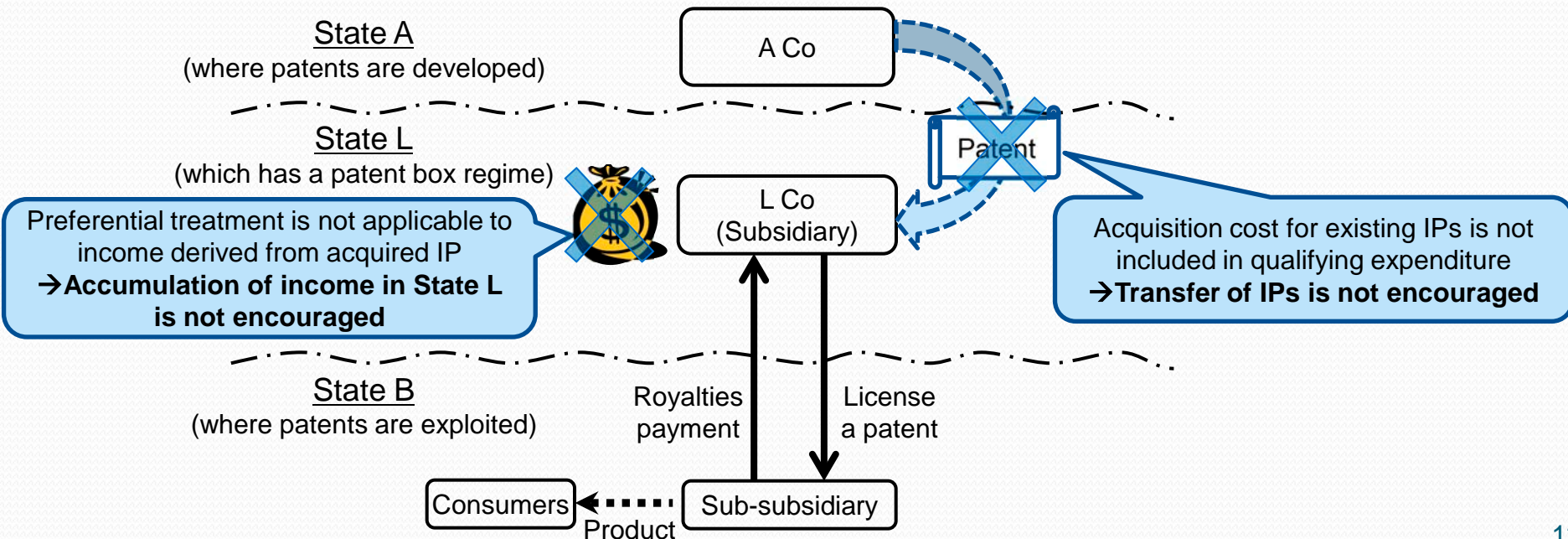
(*) Any advice, information or undertaking provided by a tax authority to a specific taxpayer or group of taxpayers concerning their tax situation and on which they are entitled to rely.

Further action

- Close old patent box regimes to new entrants until June 2016 and abolish them until June 2021.
- Consider substantial activity criteria for regimes other than patent boxes.
- Elaborate the detail of the framework for exchange of information on tax rulings among tax authorities.
- Strengthen and expand reviewing criteria other than substantiality and transparency.

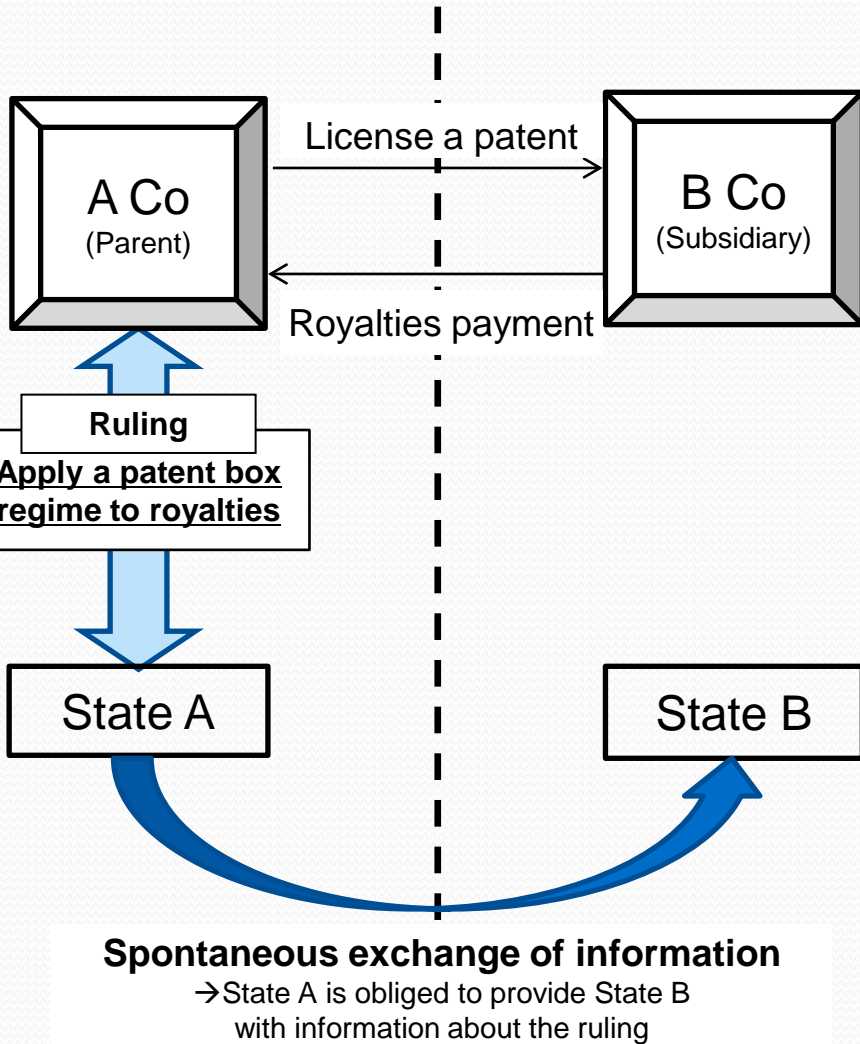
Substantial activity criteria for patent box regimes

- ✓ Determine the amount of income receiving tax benefits based on the proportion between qualifying expenditures (*) and overall expenditures for development of intellectual properties (IPs).
 - (*) Excluding outsourcing cost to related parties and acquisition cost of existing IPs
- ✓ To reflect concerns raised by businesses for additional compliance burden, 30% up-lift of qualifying expenditures is allowed.
- ✓ In order to give due consideration to taxpayers benefiting from existing regimes, grandfathering rules are allowed to introduce as follows:
 - Until the end of 2015: Commence necessary tax reforms in order to modify existing regimes according to the new criteria.
 - Until June 2016: Close old regimes to new entrants.
 - Until June 2021: Complete the abolition of existing regimes.

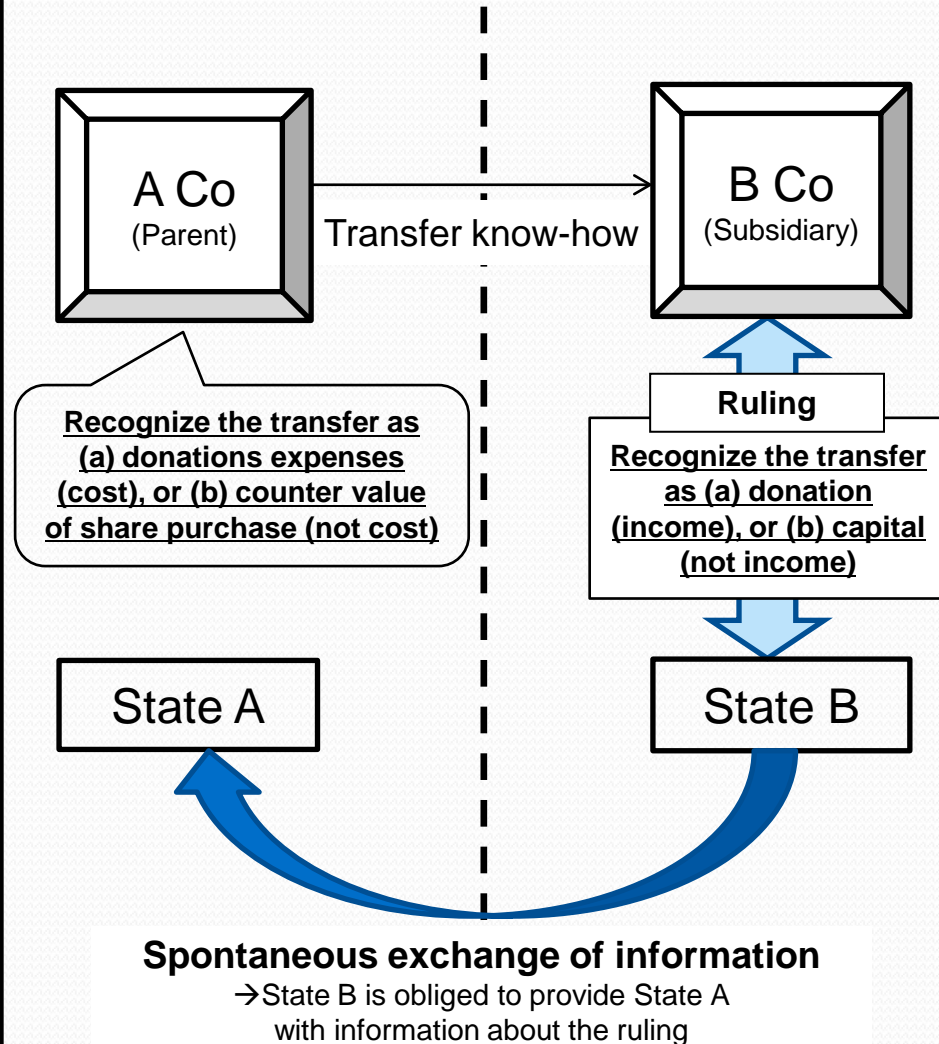


Framework of spontaneous exchange of information with those countries affected by the ruling

Case 1: Ruling related to a patent box regime



Case 2: Ruling related to inward investment



Action 13 Re-examine transfer pricing documentation

【Challenge】 In order to prevent profit shifting through intra-group transactions exploited by the MNE group and realize appropriate taxation through transfer pricing, adequate information about the relevant functions performed by each member of the MNE group is necessary.

- 【Measure】**
- In Sep., 2014, published the guidance on requirements for MNE groups to report aggregate, jurisdiction-wide information on global allocation of income, taxes paid, indicators of economic activity according to a new standardized approach to transfer pricing documentation.
 - In Feb., 2015, published CbC and TP documentation implementation guidance, including the framework for G2G mechanisms to exchange CbC Reports.
 - Based on those guidance, an implementation package will be developed, including the key elements of domestic legislation and implementing arrangements for the automatic exchange.

Master file [produced by the parent]

- ✓ Organizational structure
- ✓ Description of MNE's business(es)
- ✓ MNE's intangibles
- ✓ MNE's intercompany financial activities
- ✓ MNE's financial and tax positions

Local file [Produced by the parent/subsidiaries]

- ✓ Organizational Chart
- ✓ Business strategy
- ✓ Key competitors
- ✓ Material controlled transactions and the context in which such transactions take place
- ✓ Important assumptions made in applying the TP methodology
- ✓ Financial statements

CbC Report [Produced by the parent]

- ✓ MNE groups' information by tax jurisdiction
 - Revenues, profits, income tax paid, stated capital
 - # of employees
 - Tangible assets
 - Main business activity

“Guidance on the Implementation of TP Documentation and CbC Reporting” (Feb., 2015) (1/2)

(i) Timing of implementation

- Required to be filed for MNE fiscal years beginning on or after 1 January 2016
(Submitted in 2018)
- May need time to follow particular domestic legislative processes

(ii) Scope of the MNE groups

- MNE groups with annual consolidated group revenue in the immediately preceding fiscal year of not less than € 750 million

(iii) Necessary conditions underpinning the obtaining and the use of the CbC Report

- Confidentiality
At least equivalent to the protections that meet the internationally agreed standard of information exchange upon request
- Consistency
Make domestic legislations and administrations consistent with internationally agreed framework
- Appropriate use
Use the CbC Report for assessing high-level transfer pricing risk or other BEPS-related risks

“Guidance on the Implementation of TP Documentation and CbC Reporting” (Feb., 2015) (2/2)

(iv) The Framework for exchanging CbC Reports

1. G2G mechanism as a primary rule

- Jurisdictions should require in a timely manner CbC reporting from ultimate parent entities of MNE groups resident in their country and referred to in (ii) and exchange this information on an automatic basis with the jurisdictions in which the MNE group operates and which fulfil the conditions listed in (iii).

2. Secondary mechanisms including local filing would be accepted as appropriate (*)

- In case a jurisdiction fails to provide information to a jurisdiction fulfilling the conditions listed in (iii) above, a secondary mechanism, including through local filing, would be accepted as appropriate.

3. Developing an implementation package

4. Developing a monitoring mechanism on implementation of the package on an ongoing basis

5. Recognizing the need for more effective dispute resolution

(*) Cases where secondary mechanisms would be accepted:

- (a) A jurisdiction has not required CbC reporting from the ultimate parent entity of such MNE groups.
- (b) No competent authority agreement has been agreed in a timely manner under the current international agreements of the jurisdiction for the exchange of the CbC Reports,
- (c) it has been established that there is a failure to exchange the information in practice with a jurisdiction after agreeing with that jurisdiction to do so

Japanese Technical Assistance in Tax Policy Area

Technical Assistance Tools

Multilateral Frameworks	Bilateral Frameworks
<ul style="list-style-type: none">➤ IMF Technical Assistance➤ OECD global relations programs➤ ADB programs	<ul style="list-style-type: none">➤ Training in Japan➤ Dispatch experts

IMF Technical Assistance

- Currently, Japan provides financing support to 4 TA projects in taxation policy area conducted by the IMF.
 - **Implementing Tax Administration Reforms in Selected South East Asian Countries**
(Bangladesh, Cambodia, Lao PDR, and Nepal)
 - **Further modernization of budget management, fiscal reporting, and tax administration in West Africa**
(Burkina Faso, Cape Verde, Cote d'Ivoire, Gambia, Ghana, Liberia, Mali, Niger; Nigeria, Sierra Leone, and Senegal)
 - **Tax Administration in Caucasus and Central Asian Countries**
(Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyz Republic, Tajikistan, Turkmenistan and Uzbekistan)
 - **Fiscal Management Program in South-Eastern Europe**
(Albania, Bulgaria, Bosnia and Herzegovina, Croatia, Kosovo, Moldova, Montenegro, Romania, Serbia and Slovenia)

Multilateral Frameworks

OECD global relations programs

- Japan has been the largest donor of the OECD Global Relations Program (GRP), which provides the platform for engagement and dialogue through 50-70 events per annum.
- The events provide partner countries with the practical knowledge and experience needed to implement international standards and an opportunity to share perspectives on tax challenges they face on a daily basis.
- Broad range of topics: tax treaties, EOI, TP, auditing, tax & crime, tax policy, tax administration and BEPS
- In 2013, around 2000 tax officials from 120 countries participated in the events held in 20 host countries.

Multilateral Frameworks

ADB - Consultation Workshop on Enhancing Transparency and Exchange of Information for Tax Purposes

- ADB technical assistance project focusing on exchange of information and cross-border tax evasion.
- Organized jointly by the Asian Development Bank (ADB) and the Asian Development Bank Institute (ADBI), financed by the Japan Fund for Poverty Reduction.
- The first workshop in Tokyo on February 24th-26th, 2015.
 - 17 participants from 9 countries which is members of the Study Group on Asian Tax Administration and Research (SGATAR)
 - Through the 3 day session, the participants exchanged views and experiences in exchange of information and tax auditing for cross-border tax evasion.
 - In particular, the workshop helped participants plan improvements in current legal and administrative frameworks and practices in order to better combat tax evasion and protect tax revenues.

Bilateral Framework - Training in Japan

➤ **International Seminar on Taxation (ISTAX)**

- ✓ ISTAX is a seminar for tax officials in developing countries on the tax system and tax administration of Japan, providing lectures, etc.
- ✓ It has 2 courses: the general course for mid-career officials, and the senior course for upper management-level officials.
- ✓ Adding up the number of participants in both courses, 29 tax officials participated in FY2013.

➤ **Country-Focused Training Courses in Tax Administration**

- ✓ The courses are provided to tax officials from specified developing countries at their request.
- ✓ 116 tax officials from Cambodia, China, Indonesia, Mongolia, Tanzania and Viet Nam participated in the courses in fiscal 2013.

➤ **Training Course of International Taxation for Asian Countries**

- ✓ This course is targeted at tax officials in Asian countries on the subject of “international taxation.”
- ✓ 16 persons from 5 countries (China, Indonesia, Malaysia, Thailand and Viet Nam) participated in fiscal 2013.

➤ **Practicum at the NTA**

- ✓ This course is targeted at tax officials from developing countries who are studying at Japanese graduate schools (master's courses) on a scholarship from the World Bank, etc., and provides lectures on Japan's tax system and tax administration.
- ✓ A total of 20 students studying at graduate schools of Keio University, Yokohama National University and National Graduate Institute of Policy Studies participated in FY2013.

Bilateral Framework - Dispatch experts

➤ Long-term experts

- ✓ With a view to giving continuous advice on tax administration to developing countries, the NTA has dispatched tax officials in the capacity of long-term experts from JICA.
- ✓ In FY2013, our tax officials remain in Indonesia and Viet Nam.

➤ Short-term experts

- ✓ The NTA has dispatched its officials as lecturers in fields such as taxpayer services, international taxation and staff training.
- ✓ In fiscal 2013, officials were dispatched to give lectures, etc. to China, Indonesia, Malaysia and Viet Nam, etc.

➤ Dispatching experts to international training programs

- ✓ The NTA has dispatched its officials as lecturers to training programs organized by international organizations such as the OECD.

Thank you !
ありがとう。