

FOREIGN ASPECT OF JAPANESE TAXES

Hideo NAKAMURA

Seijo University, Tokyo

It is my aim in this paper to give light chiefly on how international investment into or out of Japan is subject to Japanese taxes. Four categories of taxes bear directly on such investment: income tax, corporation tax, inhabitant tax and enterprise tax. The first two taxes are national taxes, the third one falls under prefectural and municipal taxes, and the last one is prefectural tax. They bring in very large tax revenues respectively to the three levels of Governments. It is noteworthy that the former three categories of taxes have unilateral foreign tax credit system which is of importance to developing countries.

In addition to these taxes, tax conventions shall come under our notice. Up to the present, Japan has concluded the tax conventions with nineteen countries, of which two does not yet come into force. The tax conventions with seven countries provide "tax sparing" or "matching credit" system. It appears to be suggestive of future orientation of Japanese tax policy for developing countries.

Some "special taxation measures" are also referred to briefly in respect to the income tax and the corporation tax.

I. Income Tax

In Japan the income tax means only the individual income tax, while the corporate income tax is referred to as the corporation tax. They are treated separately from each other under the Income Tax Law and the Corporation Tax Law. The taxable period of the income tax is a calendar year, that is to say from January 1 through December 31. As a matter of principle, the income tax is under the self-assessment system, while the withholding system is adopted extensively for convenience sake. In fact

the withholding income tax exceeds by far the self-assessment income tax in tax revenue.

Paxpayers. The income tax is in principle levied on individuals. Individual taxpayers are classified into three categories: resident, non-permanent resident and non-resident. A resident is defined as an individual who has a domicile or a residence in Japan for a period of more than one year. A non-permanent resident is a resident individual who has no intention to live in Japan permanently and has not maintained his domicile or residence in Japan continuously for a period of more than five years. A non-resident is defined as an individual who is not a resident. Under the withholding system the payer of the following kinds of income to residents is required to compute the amount of income tax on such income, to deduct that amount from such income in the time of payment and to forward it to the tax office concerned: interest income, dividend income, employment income, retirement income, remuneration and charge etc. In such a case it is difficult for the payer to distinguish whether a payee of the income is an individual or not, or whether the payee is a resident or not. A domestic corporation is therefore subject to the withholding income tax on interest, dividend, charge or prize etc. received within Japan, and a foreign corporation is also subject to the withholding income tax on such income derived from sources within Japan in order to guarantee tax collection.

For the purpose of the Income Tax Law, the term "Corporation" includes: (1) an organization to which a juridical personality pertains under the Japanese Commercial Code or the Civil Code or the other laws; for instance, joint stock company, limited company, partnership, cooperative association or foundation, and (2) an organization which has its own existence independent from its members and has its own representative or administrator but has no juridical personality. We shall find later the distinction between a domestic corporation and a foreign corporation.

A resident individual other than non-permanent resident is subject to income tax on his world-wide income from any source in any country. A non-permanent resident is subject to income tax on his income from sources within Japan and on his income from sources outside of Japan which is paid within Japan or remitted into Japan. A non-resident having a permanent establishment in Japan is subject to "aggregate income taxation" on his entire income from sources within Japan, while a non-

resident not having a permanent establishment in Japan is subject to "aggregate income taxation" on his income from carrying business or holding asset within Japan and to "separate income taxation" on his income of other kinds from sources within Japan. As for corporation a domestic corporation is subject to income tax on its interest etc., dividend etc., distribution of profit, remuneration, charge or prize paid within Japan on one hand, and a foreign corporation has the same scope of taxable income as what a non-resident individual has, except business income and employment income on the other hand. The term "permanent establishment" will be referred to in detail later on.

Categories of income and tax base. According to the nature of origin and taxable capacity of income, all incomes subject to the income tax are classified into ten following categories:

1. interest income
2. dividend income
3. real estate income
4. business income
5. employment income
6. retirement income
7. timber income
8. capital gain
9. occasional income
10. miscellaneous income.

Taxable income is in principle gross receipt less necessary expenses. By the amount of receipts are meant not only money received but also the value of other things, right or economic benefits received. The term "necessary expenses" means the expenses needed directly for acquiring income and those arising during the taxable year from carrying business to acquire the income, such as selling expenses and general administrative expenses.

There are three classes of tax base of the income tax: the amount of ordinary income, the amount of retirement income and the amount of timber income. The amount of ordinary income is an aggregation of the sum of interest income, dividend income, real estate income, business income, employment income, short-term capital gain and the half sum of both long-term capital gain and occasional income. The aggregate taxation method applies to this tax base, while the separate taxation method

applies to the other two tax bases, that is the amount of retirement income and the amount of timber income respectively.

Exemptions and deductions. In view of differences of taxable capacity of taxpayers attributed to their personal circumstances, the Income Tax Law provides various personal exemptions and deductions.

1. Basic exemption. A resident taxpayer is qualified for an exemption of 170,000 yen from any of his amounts of ordinary income, retirement income and timber income.

2. Exemption for dependents. The exemption for dependents is allowed for qualified relatives. If a resident taxpayer has a spouse, an exemption of 100,000 yen is allowed for each dependent. If a resident taxpayer has no spouse, an exemption of 110,000 yen is allowed for the first dependent and exemptions of 100,000 yen are allowed for each of other dependents respectively.

3. Exemption for spouse. An exemption of 170,000 yen is allowed for a spouse of a resident taxpayer under certain conditions.

These three exemptions are general personal exemptions, which have four main functions as follows: a) leaving to a taxpayer an income necessary for maintaining a minimum-subsistence level, b) grading tax burden in accordance with the size and composition of a taxpayer's family, c) giving a slight progressiveness to the lower effective tax rates, and d) restraining the total of taxpayers below limited number.

In addition the special personal exemptions and deductions from income are allowed as follows: 4. for a working student, 5. for a widow, 6. for an old person, 7. for a physically handicapped person, 8. for contributions, 9. for fire and other casualty insurance premiums, 10. for life insurance premiums, 11. for contribution to small-scale enterprise mutual aid, 12. for social insurance premiums, 13. for medical expenses, 14. casualty losses. Besides the "employment income deduction" subject to the upper limit of 365,000 yen is allowed only for employment income. This is assumed to be a deduction of average estimated necessary expenses.

Amount of revenue		Amount deducted from employment income
over	not over	
	900	$100 + (A - 100) \times 20\%$
900	1100	$260 + (A - 900) \times 15\%$
1100	2100	$290 + (A - 1100) \times 5\%$
2100	3100	$340 + (A - 2100) \times 2.5\%$
3100		365

Amount : in 1000 yen, (A) : revenue from employment

The following three categories of taxable income are computed by deducting all the exemptions and deductions from the above amounts of ordinary income, retirement income and timber income: taxable ordinary income, taxable retirement income and taxable timber income.

Tax rates and tax liabilities. Tax liabilities on both ordinary income and retirement income may be computed by applying the following tax rates to each category of taxable income. For example tax liability on taxable ordinary income of 4,500,000 yen is computed as follows :

$$(4,500,000 - 4,000,000) \times 38\% + 890,000 = 1,080,000 \text{ (yen)}$$

In order to simplify the application of the progressive tax rate, a simplified table of tax amounts is prepared for taxable ordinary income and taxable retirement income of 1,000,000 yen or less.

The tax liability on timber income may be computed as follows:

(i) divide the taxable timber income by five, and you get the one fifth of taxable income,

(Tax Table)

Taxable income (A)		tax rate (B)	Cumulative tax amount for each bracket (C)
exceeding	not over		
300	300	10%	30
300	600	12	66
600	800	14	108
900	1200	16	156
1200	1500	18	210
1500	2000	21	315
2000	2500	24	435
2500	3000	27	570
3000	3500	30	720
3500	4000	34	890
4000	5000	38	1270
5000	6000	42	1690
6000	8000	46	2610
8000	10000	50	3610
10000	20000	55	9110
20000	40000	60	21110
40000	60000	65	34110
60000	80000	70	48110
80000		75	(C)
(A)		(B)	

Tax liability = (taxable income — (A)) × (B) + (C)
thousand yen

(ii) apply the following tax rates to that one fifth as if the one fifth as such is a taxable income, and you get a product,

(iii) multiply the product by five, and you get the tax liability in question.

For example, tax liability on taxable timber income for 4,500,000 yen is computed as follows:

- (i) $4,500,000 \div 5 = 900,000$,
- (ii) $(900,000 - 600,000 (A)) \times 14\% + 66,000 = 108,000$,
- (iii) $108,000 \times 5 = 540,000$ tax liability

This procedure means that the less progressive tax rate is applied to timber income, because this kind of income may be derived only at long intervals. Another simplified table of tax amounts is prepared for taxable timber income of 1,000,000 yen or less. Such a procedure may be applied to fluctuating and extraordinary incomes such as compensation for musical compositions and a lump sum payment to a baseball player, because these kinds of income are subject to fluctuation from year to year.

Tax credits. The Income Tax Law allowed the following tax credits against income tax in order to avoid double taxation.

Credit for dividend. Under Japanese tax laws, corporation tax is assumed to be a partial prepayment of income tax, it therefore follows that dividend is subject to double taxation, that is withholding income tax on dividend on one hand, and corporation tax on corporate income from which the dividend is paid on the other hand. Under the withholding system, as we have seen, the payer who pays dividends to a resident is required to withhold 20% of the dividend income for the withholding income tax. This rate is pegged down to 15% till December 31, 1970 by the Special Taxation Measures Law. 20% — temporarily 15% — of dividend income may be therefore credited against income tax. The tax credit for dividends is reduced for the taxpayer whose taxable ordinary income exceeds 10,000,000 yen.

Credit for foreign taxes. "Draft Double Taxation Convention on Income and Capital" by the OECD 1963 mentions the tax exemption method and the tax credit method as means of mitigating double taxation of foreign source income. The tax exemption method is also referred to as the allocation or division method or Aufteilungsmethode in German. According to an author, this method is used mainly by European countries especially those on Continent. It may be therefore referred to as Continental System. Under this method a country grants complete tax exemption to a resident or a domestic corporation on income derived from foreign

sources. This method is further divided into the method of full exemption and the method of exemption with progression. A full or unqualified exemption may lead to a saving of tax for taxpayer whose income are taxable in more than two countries, because the income law rates are progressive in most countries. Such result does not serve the proper purpose of the tax exemption system. Under the method of exemption with progression, tax may be levied at the progressive rate which corresponds to the sum of domestic and foreign incomes of the taxpayer. For example, Article XV paragraph 3 of the tax convention between Japan and Sweden says "the graduated rate of Swedish tax to be imposed on a resident of Sweden or in certain cases a Swedish corporation may be calculated as though income exempted under the present Convention were included in the amount of total income."

On the other hand, under the tax credit method a country imposes the income tax on the basis of the taxpayer's total income including income received by the taxpayer from a foreign country, and then allows a credit against its own income tax for foreign income tax paid abroad. This method is further divided into the full credit method and the ordinary credit method. In the case of the full credit, a country allows a credit against domestic tax for the total amount of income tax paid abroad, while in the case of the ordinary credit, the country allows a credit that does not exceed that part of its own tax appropriate to the income from abroad. The full credit method means that the taxpayer must always pay taxes on his total income at the tax rate of domestic country. According to an author, the tax credit method is often used in the countries of the Anglo-American legal system, it may be therefore also referred to as Anglo-American System. In German it is called also *Anrechnungsmethode*.

Sometimes a credit may be allowed not only for taxes levied abroad directly on the income such as dividends received by a resident or a domestic corporation (direct credit), but also for the underlying taxes levied on the profit out of which the dividend is paid (indirect credit). Some of these tax credit methods are normally provided bilaterally in international tax treaties, but the Japanese Income Tax Law unilaterally provides an ordinary direct credit. As we shall see, the Corporation Tax Law provides an ordinary credit, including both direct and indirect credits.

Under the Income Tax Law, any foreign income tax (including any foreign local tax on income) paid by a resident of Japan is creditable against the Japanese income tax for taxable year in which the foreign income tax accrued, subject to the following limitation:

(Japanese income tax) \times (total income from sources outside of Japan)

+ (entire income subject to Japanese income tax). If foreign income taxes accrued in any taxable year exceeds the limitation for the year, the excess may be carried forward for five succeeding years. In passing, a resident may alternatively deduct the total amount of foreign income taxes accrued in a taxable year from taxable income instead of crediting it against the Japanese income tax.

In addition, there are three other tax credits against income tax such as the credit for saving for housing under the Special Taxation Measure Law, which we shall see later on.

Final return and year-end adjustment. A resident taxpayer is required to file a final return for the income of a given year between February 16 and March 15 of the following year. Exceptional cases are as follows.

1. A resident taxpayer is not required to file a final return,
 - a) if the total sum of the amount of ordinary income, the amount of retirement income and the amount of timber income of the taxpayer does not exceed the total sum of all exemptions and deductions, or
 - b) if his tax liability which is computed by applying the tax rate to the amount of his income less all exemptions and deductions does not exceed the amount of tax credit for dividends.
2. A resident taxpayer whose employment income does not exceed 5,000,000 yen is not required to file a final return,
 - a) with regard to the ordinary income and timber income,
 - (i) if he was employed by one employer during a year and his income other than employment income does not exceed 50000 yen, or
 - (ii) if he was employed by two employers or more during a year, the total amount of his employment income is not over legal limits, and his income other than employment does not exceed 5,000,000 yen.
 - b) with regard to retirement income, if withholding income tax withheld at source is enough to settle his income tax withheld at source is enough to settle his income tax liability in the year.

In Japan most employees receive their regular pays such as salary and wage every month and their irregular pays such as bonus a few times a year. As we have seen, the payer of such employment income to a resident is required to withhold the income tax in the time of payment. At the time of the final payment in each year, the payer is required to make year-end adjustment of taxation for each employee in order to equalize the amount of withholding income tax actually withheld in a year with the annual tax liability. The payer is not, however, required to make year-end adjustment for employee whose annual employment income exceeds 5,000,000 yen.

If the annual tax liability of a taxpayer does not consist with the total sum of his self-assessment income tax prepaid and withholding income tax withheld, the difference should be paid at the same time that final return or year-end adjustment is made, or refunded afterwards as soon as possible.

Blue return. Blue return system has been introduced in the 1950 tax reform by the recommendation of a mission headed Prof. Carl S. Shoup. In 1949 the report of the Shoup Mission referred to the system as follows: "Successful income tax administration rests essentially on voluntary compliance by the taxpayer. He is the person best informed as to his taxable status, as to the amount of his income. The necessary voluntary submission of the data required to measure a tax-payer's income is called self-assessment. In areas where withholding does not operate, self-assessment system is vital to satisfactory tax administration. It is axiomatic that proper taxpayer compliance under a self-assessment system is possible only if the taxpayer keeps accurate books and records whereby he may ascertain his income. Present day record-keeping in Japan is in a deplorable state. Books and records do not exist at all for many business concerns. They exist in super abundance for other concerns, and only the taxpayer knows which is the reality and which is the mask. Every effort and resource must be brought to bear on encouraging and assisting taxpayers to keep books, to keep them accurately, and to use the accurate books for tax purpose. Every effort and resource must likewise be brought to bear on tax officials to respect the information disclosed by such accurate books. Education and the furnishing of tools will probably not be enough. Rewards must be sought which will positively encourage the taxpayer to use these tools. One possibility is to provide special administrative treatment to a taxpayer who keeps books and records. Thus, a taxpayer desiring such special

treatment would register with the Tax Office his willingness to keep accurate books and records. Such books would be kept on a form approved by the Tax Office. A taxpayer so keeping books and records would be permitted to file his return on a different colored form so as to differentiate him from other taxpayers. The Tax Office would assure such taxpayer that if he keeps such books and records and file his tax return on the special form he will not be subject to reassessment until after an actual field investigation is made of his income for the year. And if a reassessment is made, the specific reason therefor must be given."

Under the present system an individual taxpayer having business income, real estate income or timber income may file a tax return on a blue form for a taxable year. Now they are about two million in number, and about half of them file blue returns. A taxpayer filing a blue return is granted many privileges as follows:

1. The tax office may correct the income of a taxpayer only if the office finds mistakes in calculation in taxable income based on the books and records of the taxpayer. The tax office must attach the grounds for such action to take a correction of taxation.

2. Net losses in three preceding years may be deducted from taxable income of this year.

3. Reserves for Bad Debts, Returned Unsold Goods, Retirement Allowance and Special Repair may be treated as expenses.

4. Various kinds of measure are granted for depreciations.

5. Special allowance for family employees is granted. If a taxpayer pays a certain amount of income deemed reasonable to his relatives living with him in the same household, the income may be treated as expense.

In addition the Special Taxation Measures Law gives many privileges to an individual taxpayer filing blue return. Some of them are as follows:

1. Reserve for price fluctuation is treated as expense.

2. Reserve for overseas market development is treated as expense.

3. A certain percentage of the proceed derived from overseas transactions of technical service is treated as expense.

4. If a taxpayer scrapped his specific machinery or equipment, ten per cent of the designated cost of acquiring such thing may be creditable against his income tax subject to a certain limit.

5. If a taxpayer spends more expenditure on research and development during any taxable year than such a largest expenditure recorded in any taxable year after 1966, 25% of the excess may be creditable against his income tax subject to a certain limit.

Under the Special Taxation Measures Law the following measures of importance are opened to a taxpayer. As we have seen, income tax on interest and dividend is normally withheld at source at the rate of 20%. But until March 31, 1970 the interest income is only subject to withholding income tax at the reduced rate of 15%, but not included in taxable ordinary income under self-assessment income tax on one hand. This measure is assumed to be brought to bear on encouraging savings. On the other hand, dividend income may be only subject to withholding income tax at the normal rate of 20% but not included in taxable ordinary income until March 31, 1970. Alternatively dividend income may be subject to withholding income tax at the reduced rate of 15% and included in taxable ordinary income subject to self-assessment system until March 31, 1970. These alternative measures for dividend income are assumed to be brought to bear on encouraging capital market. It is now at issue in Japan whether these special measures for interest and dividend incomes should continue to exist also after March 31, 1970, because the economic efficiency of these measures is disputed on one hand the measures as such are opened to criticism from the point of view of the principle of equity.

II. Corporation Tax

Taxpayers. The Japanese Corporation Tax Law classifies corporations into two categories: domestic and foreign. A domestic corporation is defined as one having its head or chief office in Japan and a foreign corporation is defined as one which is not a domestic corporation, that is to say which does not have its head or chief office in Japan. It is the place formally designated in the charter or article of association that is essential to this definition. Accordingly any corporation organized in Japan is a domestic corporation, even if it is a subsidiary of a foreign corporation. Last year corporations were about 900,000 in number in Japan, of which about 600 fell under foreign corporations. A foreign corporation falls under a foreign subsidiary, (1) if 25% or more of shares issued or of paid-up capital or of share with voting powers of the corporation are owned by a domestic corporation and (2) if it is established for the purpose of carrying business but not solely for tax considerations.

Foreign corporations are divided into two classes. The ones are corporations having permanent establishment in Japan, the others are corporations not having permanent establishment in Japan but having a certain kind of income from sources within Japan. Moreover, the former corporations are divided into two subclasses. The first are having permanent establishment in Japan, that is to say carrying on their business activity with a branch, sub-branch, or other place of enterprise or office, factory or warehouse, mine, quarry or other place of extraction of natural resources, or other fixed place of business. The second are corporation undertaking construction, installation or assembly activities or providing personal services for supervision or superintendence of such activities undertaken in Japan for more than one year, or carrying on their business through certain kinds of agent in Japan. Thus we may show this classification of corporations as follows :

1. domestic corporation,
2. foreign corporation,
 - 2-1. having a business activity in Japan
 - 2-1-1. carrying a business with a branch etc.. (A)
 - 2-1-2. undertaking construction etc., (B)
 - 2-2. not having a business activity but having income in Japan. (C)

A domestic corporation is subject to the corporation tax its entire income, regardless of whether it arises from sources within Japan or outside of Japan.

A foreign corporation of the kind (A) is subject to corporation tax on its entire income from sources within Japan, which includes income arising from activities unrelated to the foresaid business activity. In the next place, a foreign corporation of the kind (B) is subject to corporation tax only on its income directly attributable to its business activity in Japan. As we have seen, it is subject to also withholding income tax on its specified kinds of income not attributable to its business activity but deemed to be derived from sources within Japan. Finally a foreign corporation of the kind (S) is subject to corporation law on its following incomes : income from the utilization of holding of an asset located in Japan, income from the sale or disposal of immovable property in Japan (including rights to such property), income from the sale of shares of stock in a Japanese domestic corporation, if the seller foreign corporation and its subsidiaries have held 25 % or more of the outstanding shares of the domestic corporation at any time during the taxable year of sale or the two preceding years, and if they have sold 5 % or more of such outstanding shares within a taxable year.

Taxable income. The corporation tax is imposed on income of corporation during an accounting period on one hand, and on the other it is imposed on liquidation income at the time of dissolution or merger, where, a corporation ceases to exist either by dissolution or by merger. Taxable income of an accounting period is the excess of gross receipts over gross outlay (expenses and losses) during such accounting period. In practice the computation of taxable income is substantially in conformity with standard accounting principles generally accepted in the determination of profit and loss of corporation. There are, however, some special rules with respect to valuation of inventory, the depreciation of assets etc.

It should be noted that dividends received by a domestic corporation from another domestic corporation are excluded from income of the recipient up to the amount of dividends paid out of the recipient's taxable income but then 25 % of the dividends received in excess of those paid out is included in taxable income. This rule does not apply to foreign corporations.

Tax rates. Corporation tax is now imposed at the following rates.

- I. tax rates for ordinary income, not distributed as dividends,
 - a) ordinary corporations
 1. corporations with capital over 100 million yen 35 %
 2. corporation with capital not over 100 million yen
 - for annual income over 3 million yen 35 %
 - for annual income not over 3 million yen 28 %
 - b) special corporations and corporations in public interest 23 %
- II. reduced tax rates for ordinary income, distributed as dividends,
 - a) ordinary corporations,
 1. corporations with capital over 100 million yen 26 %
 2. corporation with capital not over 100 million yen
 - for annual income over 3 million yen 26 %
 - for annual income not over 3 million yen 22 %
 - b) special corporations 19 %
- III. tax rate for retirement reserves
- IV. tax rate for liquidation income
 - a) ordinary corporations 30 %
 - b) special corporations 21 %

V. tax rates for retained (undistributed) earnings of family corporations which is a kind of domestic corporations

- | | |
|---|------|
| a) retained earnings not over 30 million yen | 10 % |
| b) retained earnings over 30 but not over 100 million yen | 15 % |
| c) retained earnings over 100 million yen | 20 % |

A corporation falls under a family corporation, a) if 50 % or more of its capital is owned by three shareholders or less, b) 60% or more of its capital is owned four shareholders or, c) 70 % or more of its capital is owned five shareholders.

Tax credits. When the whole or a part of an ordinary income of an accounting period of a corporation is subject to other taxes than the corporation tax for various purposes, tax credit systems may be established in order to include eventually these taxes in the corporation tax.

Income tax credit. The Japanese income tax withheld at source from dividend, interest etc. which the corporation has received during the accounting year is creditable against the corporation tax.

Foreign tax credit. The Japanese Corporation Tax Law provides unilaterally an ordinary credit, including both direct and indirect credits, as we have seen.

Direct credit. Under the Japanese Corporation Tax Law, any foreign corporation tax — including any foreign local tax — on a domestic corporation is creditable against the Japanese corporation tax for taxable year in which the foreign tax accrued, subject to the following limitation :

$$\text{(Japanese corporation tax)} \times \text{(entire income from sources outside of Japan)} \div \text{(entire income subject to Japanese corporation tax)}$$

If foreign taxes accrued in any taxable year exceed the above limitation for that year, the excess may be carried forward for the five succeeding years or carried back for the preceding years. In passing, a domestic corporation may deduct the total amount of foreign taxes accrued in any taxable year from taxable income instead of crediting it against the domestic corporation tax.

Indirect credit. In order to treat impartially an investment abroad by a domestic corporation through its foreign subsidiary which is a foreign corporation and another investment abroad by the same domestic cor-

poration through its foreign branch, foreign taxes levied on the foreign subsidiary of a Japanese domestic corporation may be creditable against the Japanese corporation tax levied on the Japanese parent corporation. When a domestic corporation receives dividend from its foreign subsidiary, the part of the foreign corporation tax imposed on the income of the foreign subsidiary which corresponds to the dividends received by the domestic parent corporation may be creditable against the Japanese corporation tax on the domestic corporation, so far as the domestic corporation includes this amount of foreign tax in its taxable income. The creditable amount of foreign corporation tax is computed as follows :

A : income of the foreign subsidiary,

B : foreign corporation tax imposed on the foreign subsidiary,

C : dividends paid to the domestic parent corporation, creditable amount = $B \times C \div (A - B)$.

Tax return and tax payment. The Japanese corporation tax is under the self - assessment system. Taxable income is computed and a tax return is filed on the basis of an accounting period, which does not exceed twelve months. With regard to the year 1966, 98 % or more of corporation in number adopt a twelve - month accounting period, and the remainders adopt a six - month accounting period. A final return must be filed and the tax must be paid within two months after the close of each accounting period. If an accounting period exceeds six months, and interim tax return must be filed and the tax must be paid within two months after the close of the first six months of the period. A final tax return must be accompanied by the list of property, balance sheet, income statement, and other documents describing items necessary for calculating its income and the corporation tax due.

Blue return. The blue return system stated above applies also to the corporation tax. In Japan the commercial code imposes an obligation upon a juridical person established for profit to make a closing account once a year, to equip and keep books and records and to clarify substance of business to share - holders and others. It should be therefore unnecessary to promote equipping books and records in such a corporation by the blue return system. In fact, however, a corporation has not always accurate books and records. In such a circumstance the blue return system has been introduced as an incentive to improve and modernize taxpayer's book keeping standard and to stimulate honest self - assessment, as we have seen. Since some privileges are granted to corporations filing blue

returns, one third or more of corporations in number are now filing blue returns.

Under the Corporation Tax Law the main privileges associated with the blue return system are as follows :

1. The tax office may correct the income of a corporation only if the office finds mistakes in calculation of income based on the books and records of the corporation. The office must attach the grounds for such action to make a correction of taxation, as we have seen in the case of the income tax.

2. Operating losses may be carried forward for five succeeding years and carried back for one preceding year.

3. Reserves for Bad Debt, Bonus Payment, Retirement Allowance, Special Repair and Returned Unsold Goods may be treated as expenses.

4. Durable years of depreciable assets may be reduced under certain conditions.

In addition the Special Taxation Measures Law gives many other privileges to corporations filing the blue return. Some of them are as follows :

5. Special tax credits may be granted for improvement of capital structure, Scrap - down, corporate merger etc.

6. In addition to ordinary depreciation, many special or extra depreciation measures for plant modernization, or increasing export etc. are established.

7. Many reserves are granted for price fluctuation or structural improvement of small or medium - sized enterprises etc. We should especially note two following items of all things.

8. Reserve for overseas market development. If a corporation derives income wholly or partially from overseas transaction, a certain percentage of the income is deductible as the cost of overseas market development in computing the amount of taxable income.

9. Reserve for loss on overseas investment. If a domestic corporation credits not over one - half of acquisition cost of newly issued shares of a overseas business company or a foreign investment company, the credited amount may be treated as expense, as long as the domestic corpo-

ration holds 10 % or more of the shares of the overseas business company or 1 % or more of shares of the foreign investment company.

Overseas business company consists of developing country's company and company of petroleum resources developing areas. The former is a company having its head or chief office in a developing country, whose purpose is to engage in business exclusively in one or more developing countries. The latter is a company having its head or chief office in petroleum resources developing areas, whose purpose is to engage in petroleum resources developing business exclusively in the specified areas other than developing areas. Overseas business company is therefore a foreign corporation.

Foreign investment company is a company having its head office in Japan, established for making investment or longterm loans in overseas business company and designated as a remarkable contributor to progress in investment in developing countries. Foreign investment company is therefore a Japanese domestic corporation.

10. Special deduction for overseas transaction of technical services. A certain percentage of the proceed derived from following overseas transaction may be deducted from taxable income: the sale or license of patent or know-how, the sale or license of performing rights of film or other copyrights, technical services such as consulting or supervising related to construction of plant or equipment, and transportation or shipping services outside of Japan.

It should be noted that most of the measure provided by the Special Taxation Measures Law are subject to time limit, for example the measures under the heads 9 and 10 are in effect only from April 1, 1964 till March 31, 1971.

III. Tax conventions

Japan has concluded the tax conventions for the avoidance of double taxation with the following countris :

The United States of America,	signed on April 16, 1954
1 st supplementary amendment	March 23, 1957
2 nd supplementary amendment	May 7, 1960
3 rd supplementary amendment	August 14, 1962
Sweden	December 12, 1956

1 st supplementary amendment	April 15, 1964
Pakistan	February 17, 1959
1 st supplementary amendment	June 28, 1960
Norway	February 21, 1959
sweeping amendment	May 11, 1967
The Kingdom of Denmark	March 10, 1959
sweeping amendment	February 3, 1968
India	January 5, 1960
The Government of the State of Singapore	April 11, 1961
The Republic of Austria	December 20, 1961
The United Kingdom of Great Britain and Northern	
Ireland	September 4, 1962
New Zealand	January 30, 1963
1 st supplementary amendment	March 22, 1967
Thailand	March 1, 1963
The Federation of Malaya	June 4, 1963
Canada	September 5, 1964
Le Gouvernement de la République française	November 27, 1964
The Federal Republic of Germany	April 22, 1966
The United States of Brazil	January 24, 1967
The Government of Ceylon	December 12, 1967
The Kingdom of Belgium	March 28, 1968
	not yet in effect
The United Arab Republic	September 3, 1968
	not yet in effect

Each of these conventions covers the Japanese income tax and the corporation tax, those with Sweden, Denmark, France, Germany, Belgium and Arab cover local inhabitant tax and that with Germany covers also local enterprise tax. Japan has concluded also another convention with the U. S. A. covering estate, inheritance and gift taxes.

A permanent establishment. Under these conventions with Japan, a foreign enterprise is not subject to Japanese taxes on its industrial and commercial profits from sources within Japan, unless it has a permanent establishment in Japan. If a foreign enterprise has a permanent establishment in Japan, it is variously subject to Japanese taxes on its industrial and commercial profits from sources within Japan under different conventions. With respect to a permanent establishment, most of these conventions are based on so-called attributable system, except that only those with the U. S. A. and Pakistan are based on so-called entire sys-

tem. Article III of the convention with the U. S. A. says "If it has such permanent establishment such other state may impose its tax upon the entire income of such enterprise from sources within such other state." The similar provision is found in the convention with Pakistan. The attributable system has been introduced into the convention with India in 1960 for the first time. Article III of the convention says "If it has such permanent establishment, the profits attributable thereto may be subject to tax in that other Contracting State." The conventions with Sweden, Norway and Denmark had been based on the entire system at the start, and now are based on the attributable system through amendment. Thus in this respect the tax conventions with Japan are in accordance with the provision of Article 7 paragraph 1 of the Draft Convention of the OECD.

The coverage of term "permanent establishment" is somewhat different under different conventions. Whether on the attributable system or on the entire system, the coverage of permanent establishment has a effect on tax revenues of the countries concerned. In tax convention between industrialized country and developing country, in general the former wants to make the coverage narrower and the latter wants to make it wider, because investment incomes mostly flow out of the latter to the former in such a case. A model of definition of permanent establishment is found in Article 5 of the Draft Convention as is generally known

The coverage of permanent establishment in the Japanese Corporation Tax Law is more or less wider than that in the Draft Convention. As to the term "agent" the Law does not exclude (A) "the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise" from the permanent establishment, which the Draft Convention expressly excludes in Article 5 paragraph 3 c). The Law includes (B) "a person who maintains enough assets to fill ordinary demands of customers and delivers such assets for demands of customers" in the term "permanent establishment, "while similar provisions are found also in the tax conventions with India, U. K., New Zealand, Malaya, and Ceylon. It is apparent that the above item is excluded from permanent establishment by Article 5 paragraph 3 a) and b) of the Draft Convention.

Now, in Article II paragraph 1 i) of the convention with India "an enterprise of one of Contracting States shall be deemed to have a fixed place of business in the other Contracting State if it carries on in that

other Contracting State a construction, erection or assembly project or the like." According to Article 5 paragraph 2 g) of the Draft Convention, however, the term "permanent establishment" includes each of them, only if it exists for more than twelve months, and similar provisions are found in the tax conventions with the U. S. A., Sweden, Norway, Denmark, Austria, the U. K., New Zealand, Canada, France, Germany and Belgium. The tax conventions with Malaya, Brazil, Ceylon and Arab require the term of existence of more than six months in such case. The tax conventions with Pakistan, Singapore and Thailand have no such provision. In passing, I understand that, India has adopted the above definition in all the tax conventions with Sweden, Germany, Norway, Denmark, the U. S. A., Finland, Pakistan, Ceylon and Austria as well as Japan. Thus we see that the attitude of India in defining "permanent establishment" is somewhat peculiar.

After all the coverages of the term "permanent establishment" in tax convention with developing countries, especially with India, appear to be wider than both in the Draft Convention and the Japanese Corporation Tax Law. In this respect we find a great longing of the developing countries for giving a priority of taxation to the country of source of income. In the convention with Austria in 1961, Japan has adopted the definition of a permanent establishment in the Draft Convention for the first time.

Dividend, interest and royalties. A person who receives investment incomes such as dividends, interests and royalties etc. is generally subject to the taxation on his gross receipts at a definite rate in the country of source. If the tax rate is so high, it may be impossible for a tax-payer who is nonresident in the country of source to credit the amount of tax paid there against his tax liability in his own country. Thus most of tax conventions provide that investment incomes are subject to only reduced tax rates or exempted from taxation. In this respect the Draft Convention provides that the tax charged in the country of source shall not exceed :

1. 5 % of the gross amount of the dividends if the recipient is a company which hold directly at least 25 % of the capital of the company paying the dividends, otherwise 15 % of the gross amount of the dividends,
2. 10 % of the amount of the interest.
3. Royalties arising in a Contracting State and paid to a resident

of the other Contracting State shall be taxable only in that other State, in other words royalties shall be exempted from taxation in the former state.

In the tax conventions with Japan the equivalent limits of the taxation on investment income are set forth as follows.

	dividends	interest	royalties
U. S. A.	15 % (10 %)	10 %	10 %
Sweden	15 % (10 %)	10 %	10 %
Pakistan	1)	30 %	exemption
Norway	15 % (10 %)	10 %	10 %
Denmark	15 % (10 %)	10 %	10 %
India	no	no	no
Singapore	15 % (10 %)	no	exemption
Austria	20 % (10 %)	10 %	10 %
U. K.	10 % (10 %)	10 %	10 %
New Zealand	10 %	no	no
Thailand	20 % (10 %)	no	15 %
Malaya	15 % (10 %)	no	exemption
Canada	15 %	15 %	15 %
France	15 %	10 %	10 %
Germany	15 % (10 %)	10 %	10 %
Brazil	no (10 %)	10 % for certain items	
Ceylon	2)	no	exemption or by half
Belgium	15 %	15 %	10 %
Arab	3)	no	15 %

() tax rate only on the dividends between parent and subsidiary corporations.

1) there is no general provision, but the rate of 15% applies to the dividends between parent and subsidiary corporation from Japan to Pakistan.

2) there is no general provision, while the rate of 20% applies to the dividends from Japan to Ceylon in the absence of permanent establishment.

3) there is no general provision, while the rate of 15% applies to the dividends from Japan to Arab in the absence of permanent establishment.

As to the rates on interest income in this table we find a remarkable contrast between the developing countries and the industrialized coun-

tries: in principle, developing countries have no limit on such tax rates, while industrialized countries have the limited tax rate of 10%, as specified in the Draft Convention. As to the tax rates on dividends income too, such contrast may be found to a less extent. As to royalties, we find normally the tax rate of 10% in industrialized countries on one hand, and a variety of cases in developing countries on the other hand. In this respect it is noteworthy that there is no limit of the taxation on any investment income in the tax convention with India. I understand that in any tax agreements with any countries India have no limit of such taxation in the country of source of income. Such attitude of India may be only justified by the inference that investment income normally flows from India and the limitation on such taxation means the loss in tax revenue of India. Though this is a somewhat extreme case in the tax conventions with Japan, the above justification may be more or less applied to the cases of the other developing countries for giving a priority of taxation to the country of source of income.

Now, income derived from the operation of ships or aircraft is mutually exempted from taxation in the tax conventions with the fifteen following countries: the U.S.A., Sweden, Norway, Denmark, Austria, the U.K., Canada, France, Germany, Singapore, New Zealand, Malaya, Brazil, Belgium and Arab. Only in the convention with Ceylon 50% of such income is subject to taxation. In the tax conventions with the other three countries income from operation of aircraft is mutually exempted from taxation, while shipping income is subject to taxation by half amount in those with India and Thailand, but to no provision in that with Pakistan. Such taxation on shipping income in the tax conventions with these four countries may be justified by the inference that such income almost unilaterally flows from these countries to Japan.

Tax sparing. In the tax conventions with Japan the thirteen following countries have adopted the tax credit method for any kind of income: the U.S.A., Denmark, Austria, the U.K., Canada, Pakistan, India, Singapore, New Zealand, Thailand, Malaya, Brazil and Ceylon. On the other hand the rest have adopted the tax exemption method for ordinary income and the tax credit method for investment income. Sweden, Norway, France, German, Belgium and Arab belong to the latter group.

Now, Japan has adopted the tax credit method for any kind of income in every tax convention, which is in accordance with the equivalent system under both the Japanese Income Tax Law and the Corporation

Tax Law, as we have seen. Under such system a resident or a domestic corporation in Japan who invests in a foreign country X is subject to Japanese taxes on foreign investment income, and entitled to credit against domestic tax liability the taxes paid in the country X on such investment income. In such a case even if the country X grants to Japanese investor the tax reductions as a device to attract investment, the reductions result in no increase in net return to the Japanese investor but increase in the tax revenue of the Japanese Government. Thus in general the revenue loss of capital importing country will result in a revenue gain of capital exporting country under the tax credit system. In this respect, a report of the OECD Fiscal Committee: "Fiscal Incentives for Private Investment in Developing Countries" says as follows. "For example, assume that a dividend of 100 units has been paid by a company in a developing country to a recipient in Japan and that the tax rate is 30% in the former and 50% in Japan. Since the credit mechanism applies in Japan, net tax of Japan will be 20 units. Suppose, however, that the developing country adopts a fiscal incentive law by virtue of which the profit of the enterprise paying the dividend is exempt from tax. In that case the dividend recipient would have no foreign tax to credit and the tax collected by Japan would increase by 30 units. This is obviously not to the benefit of the developing country and to prevent this, the tax incentive law, in at least one instance, provides that it shall not be available to an investor who cannot enjoy its benefits." Some of the tax conventions with Japan grant to Japanese investors a tax credit against their Japanese tax liability for the tax "spared" abroad under certain conditions. "Applying such a credit to the preceding illustration, Japan would continue to collect 20 units of tax, instead of 50, even though no tax is paid to the developing country."

Such tax measure is called the "tax sparing" device. It is in the convention with India that Japan has adopted this device for the first time. Now it has been found also in those with the other six countries: Pakistan, Singapore, Thailand, Malaya, Brazil and Ceylon. Under this device the taxes reduced or exempted either under laws of these countries or under provisions of the conventions are deemed to be paid in those countries and creditable against the Japanese taxes. For example, Article XIV paragraph 3 c) of the tax convention with Singapore says "where the taxpayer in Japan receives a dividend from Singapore corporation which is exempted under the provisions of section 18 of the Pioneer Industries (Relief from Income Tax) Ordinance, 1959, there shall be deemed to have

been paid by the taxpayer in Japan the amount of Singapore tax so exempted under the provisions of the said Ordinance.”

It is noteworthy that this device has a selective effect to investors: only Japanese investors in enterprises, industries and technics etc., which a developing country designates as requirements for economic development, may credit against their Japanese tax liabilities the tax reduced or exempted in the developing country. Therefore the tax conventions must specify such requirements which a developing country may designate only with approval of Japan. Requirements in the tax conventions with the above countries are as follows.

Pakistan : interest payable the Pakistan Government (including local Governments) or a Pakistan enterprise engaged in an “industrial undertaking.”

India : the special incentive measures designated to promote economic development in India, newly established industrial undertaking, interest payable on money borrowed abroad, development rebate, dividends received by corporation from Indian companies engaged in certain basic industrial undertakings.

Singapore : the Pioneer Industries (Relief from Income Tax) Ordinance, 1959, of Singapore, which provides for special measures designated to encourage the establishment and development in Singapore of industrial enterprise.

Thailand : the Promotion of Industrial Investment Act.

Malaya : the Pioneer Industries (Relief from Income Tax) Ordinance, 1958, of the Federation which makes special provision for encouraging the establishment and development in the Federation of industrial and commercial enterprise.

Brazil : dividends, interest and royalties on specified conditions, the special incentive measures designated to promote economic development in Amazonian Region and Northern and Northeastern Region of Brazil.

Ceylon : dividends received by a company resident in Japan from a company resident in Ceylon not less than 10 per cent of the shares of which are held by one or more residents of Japan.

With regard to the effect of this device, the above report of the OECD says “Japan has noticed a quickening of interest among businessmen in

investing in countries with which it has entered into 'tax sparing' treaties." In fact Japanese overseas investments in the above six Asian countries exceed both in number of cases and in amount of money those in any other southeast Asian countries except China (Formosa), and those in Brazil exceed by far those in any other Latin American countries.

To be more exact, this device should not be called "tax sparing" but "matching credit." "Tax sparing" system in substance refers to the "tax spared" income, to which either of the above two methods, exemption and credit, may be applied, as the Commentaries of the Draft Convention of the OECD point out. From this point of view, such device should be regarded not only as a measure for avoidance of international double taxation but also as a measure for encouragement of capital-flow into developing countries. I cannot mention, however, in aggregate what effect has the matching credit system of Japan produced on overseas investment, repatriation and reinvestment, because unfortunately I have been unable to find any datum of it in our tax authorities of responsible for it.

IV. Inhabitant Tax and Enterprise Tax

Inhabitant tax. This tax consists of the prefectural inhabitant tax and the municipal inhabitant tax, and each of them consists of individual inhabitant tax and corporate inhabitant tax.

Individual inhabitant tax. This tax is levied on an individual residing or having his office, place of business or house in a given prefecture or in a given municipality as of January 1 of each year. The tax base of this tax is the amount of income arised in the preceding calender year. This tax consists of "per capita levy" and "income levy." An individual residing and having his office etc. in a prefecture or in a municipality is subject both to the per capita levy and to the income levy, while another individual not residing but having his office etc. therein is only subject to the per capita levy. The per capita levy is 100 yen in the prefectural inhabitant tax, and amounts 200 yen, 300 yen or 600 yen in the municipal inhabitant tax according to its number of inhabitants. Therefore, the total of per capita levies may amount to 300 yen, 500 yen or 700 yen.

The income levy in the prefectural inhabitant tax is computed on three kinds of taxable income under the national income tax. The tax rates are 2% for income of 1,500,000 yen or less and 4% for income over 1,500,000 yen. With regard to the income levy in the municipal inhabitant tax, it

should be noted that exemptions and deductions are somewhat different from those under the income tax. This income levy has thirteen progressive tax rates from 2% for income 1,500,000 yen or less to 14% for income over 50,000,000 yen. Therefore, the rates of total income levies for an individual may vary from 4% to 18%.

Under both prefectural and municipal inhabitant taxes, any foreign income tax (including any income levy under foreign local inhabitant tax) paid by a resident of Japan is creditable against these Japanese inhabitant taxes for individuals, if the foreign tax exceeds the above limitation of the foreign tax credit under the Income Tax Law. In addition, 4.2% of dividend income is creditable against these inhabitant taxes (3% for prefecture and 1.2% for municipality).

Corporate inhabitant tax. This tax is levied on a corporation having its office, place of business, dormitory, club or the like in a given prefecture or in a given municipality. This tax also consists of per capita levy and income levy. A corporation having its office of place of business in a prefecture or in a municipality is subject both to the per capita levy and to the income levy, while another corporation not having its office etc. but maintaining a dormitory of club etc. therein is only subject to the per capita levy.

The per capita levy amounts to 1000 yen for corporations with capital over 10,000,000 yen and mutual insurance companies, and to 600 yen for other corporations in the prefectural inhabitant tax. It amounts to 4000 yen and 2400 yen under the same condition in the municipal inhabitant tax.

In the prefectural inhabitant tax, the income levy amounts to 5.8% of the corporation tax, and in the municipal inhabitant tax it amounts to 8.9% of the amount of corporation tax. Therefore, the rate of total income levies amounts to 14.7% of the amount of the corporation tax.

Under both prefectural and municipal inhabitant taxes, any foreign corporation tax (including any income levy for corporation under foreign local inhabitant tax) paid by a Japanese corporation is creditable against these Japanese inhabitant taxes for corporation, if the amount of foreign tax exceeds the above limitation of the foreign tax credit under the Corporation Tax Law.

Return and Payment. An individual taxpayer is required to file a return with the municipal tax office till March 15 of each year, unless

he files a return for self-assessment income tax. A part of the inhabitant taxes for individuals is withheld at source in paying salaries and wages etc., while the other part is paid in four installments annually according to a tax notice from the municipal tax office. A corporation is required to file a return with and pay the tax to both the prefectural and the municipal tax office within two months after the closing of the accounting year.

It should be added that the proportion of the sum of income tax and both prefectural and municipal inhabitant taxes for individuals (excluding per capita levy) to the taxable income shall not exceed 80%.

The enterprise tax. This is a prefectural tax which is levied both on individuals engaged in specified kinds of business and on corporations engaged in business.

The tax base of the enterprise tax on individuals is income derived from business in a preceding calendar year. Taxable income is computed substantially in the same way as business income and real estate income under the self-assessment income tax with a few exceptions such as "income deduction for proprietor" of 270,000 yen. The tax rate ranges from 3% to 5%. The tax is levied on basis of returned (sometimes corrected or determined by the tax system). A taxpayer, therefore, is required to file a tax return with the prefectural tax office, unless he files a tax return for the self-assessment income tax with the national tax office. The tax shall be paid in semiannual installments, in August and November.

The taxable income of the enterprise tax on corporations is computed in the same way as that of the corporation tax with some exceptions. The tax has four tax rates from 6% to 12% according both to the categories of corporations and to the amounts of taxable income, while the other rate of 1.5% applies to the corporations engaged in power and gas supplies and insurance business. Procedures of filing a return and paying the tax are substantially to those in the corporation tax.

It is noteworthy that income derived from business in foreign countries is excluded from taxable income of enterprise taxes both individuals and on corporations, dividends received from domestic corporations also are excluded from taxable income subject to no upper limitation.

Reserves for overseas market development, loss on overseas investment and overseas transactions of technical services as well as foreign tax credit are not applicable to the enterprise taxes both on individuals and on corporations.

TABLE I
Income Tax and Corporation Tax in National Tax Revenue

fiscal year	income tax	with-holding	self-assessment	corporation tax	national tax revenue
1960	21.2%	16.3%	5.4%	31.8%	100.—%
1961	22.2	16.5	5.7	32.1	100.—
1962	24.2	17.6	6.6	32.7	100.—
1965	15.3	18.2	7.1	31.6	100.—
1964	26.5	18.9	7.6	30.9	100.—
1965	29.6	21.7	7.9	28.3	100.—
1966	29.6	21.5	8.1	28.2	100.—
1967	29.3	20.9	8.4	29.7	100.—
1968	30.5	21.6	8.9	29.7	100.—
1969	30.9	21.6	9.3	30.2	100.—

Estimated for 1968 and 1969.

TABLE II
Inhabitant Tax and Enterprise Tax in Prefectural Tax Revenue

fiscal year	1965	1966	1967	1968	1969
inhabitant tax	22.4%	22.2%	21.9%	20.3%	19.0%
individual	15.6	15.4	14.9	13.3	11.8
corporation	6.8	6.8	7.0	7.0	7.2
enterprise tax	42.2	42.4	43.6	43.1	44.1
individual	3.2	3.2	3.1	2.6	2.5
prefectural					
corporation	39.0	39.2	40.5	40.5	41.6
tax revenue	100.—	100.—	100.—	100.—	100.—

Estimated for 1968 and 1969.

TABLE III
Inhabitant Tax in Municipal Tax Revenue

fiscal year	1965	1966	1967	1968	1969
inhabitant tax	39.7%	39.8%	41.1%	39.8%	39.7%
individual	28.7	28.1	28.4	26.5	25.5
corporation	11.0	11.7	12.7	13.3	14.3
municipal tax revenue	100.—	100.—	100.—	100.—	100.—

TABLE IV
Withholding Income Tax Revenue in the fiscal year 1967

categories of income	amount of tax	proportion
interest income	134 794 million yen	14.2%
dividends income	93 767	9.9
employment income	639 549	67.2
retirement income	10 562	1.1
remuneration, charge etc.	51 969	5.5
income of non-resident etc.	19 065	2.0
total	949 706	100.—