Vietnam-Japan Tax Treaty

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I. Introduction[1]

1. East Asian Economies

From 1965 to 1990, the East Asian economies grew faster than those of all other regions of the world. To illustrate, during this period the average growth rate of gross national product (GNP) per capita of 23 economies of East Asia was 5.2 per cent which was the highest in the world, the average of all the world being 1.8 per cent. With the advent of 1990's, this economic growth further accelerated. Thus, during 1990–93 the average annual growth rate of GNP of East Asia and Pacific region achieved 6.4 per cent which was also higher than any of other regions of the world, as against 1.2 per cent of the world average and negative growth of the African countries.

2. Vietnamese Economic Background

Vietnam which was South-North reunified in April 1975 introduced Vietnam's version of economic reform known as "Doi-Moi" in 1986 at the Sixth Congress of the Communist Party. Under this "renovation" policy, Vietnam is now undergoing the transition from a centrally-planned to free market economy. In order to implement this policy, in the following year, the Law on Foreign Investment in Vietnam was approved by the National Assembly.[2]

In February 1994, the United States lifted its 19-year economic embargo against Vietnam. In July 1995, Vietnam joined the Association of Southeast Asian Nations (ASEAN), thus getting integrating into the East Asian economic miracle. In the following month, the U. S. and Vietnam resumed their diplomatic relations which were severed in 1975 when the government of South Vietnam fell at the end of the Vietnam War.

It is to be noted, according to the forecasts by the Organization for Economic Co-operation and Development (OECD), the growth of the dynamic Asian economies (shortened as "DAEs") of South Korea, Taiwan, Hong Kong, Singapore, Thailand

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1 The author is much indebted to Katsumi Shinagawa, *Nihon-Vietnam Sozeijouyaku-no-Kaisetsu* (in Japanese), 1996, Japan Tax Association. He is grateful to Mr. Daisuke Kotegawa, Director, International Tax Affairs Division, Tax Bureau, Ministry of Finance of Japan for helpful comments.

2 For the Law on Foreign Investment in Vietnam, see Christopher Potter, "Introduction to Vietnamese Foreign Investment Tax Law" International Bureau of Fiscal Documentation, *The Bulletin for International Fiscal Documentation,* Vol.49, No.1, pp.17–22.

and Malaysia is projected to slow from 7.6 per cent and 7.8 per cent in 1994 and 1995, respectively, to an average of 6 to 7 per cent over the next two years. This deceleration of the dynamic economic growth is due to the infrastructural bottlenecks and labour shortage resulting in higher cost pressures and demand for imported capital goods. In spite of the most recent unfavourable economic circumstances of East Asia, Vietnam is expected to enjoy continued fast growth, thus vying for the next Asian "Tiger". In this way, Vietnam is now drawing more attention of foreign investors.

II. Relations with Japan

1. Diplomatic Relations

Japan established the diplomatic relations with Vietnam in 1973 after a peace settlement for the Vietnam War was signed in Paris by the four parties involved. In April 1978, both countries agreed that Vietnam would repay the loans provided to the former South Vietnam government over an extended period and Japan would provide a greater amount of new loans and grants-in-aid. However, since Vietnam invaded Cambodia in December of the same year, Japan suspended in principle all the official development assistance and the diplomatic relations became dormant.

But as a peace accord with Cambodia was reached in Paris in October 1991, Japan resumed a full-fledged aid talk which resulted in the pledge of 45.6 billion yen loan in November 1992. To strengthen the economic tie between Japan and Vietnam, a Japanese Consulate General was opened in Ho Chi Minh City in January 1993. In March of the same year, the Vietnamese Premier Vo Van Kiet came to Japan and in August in 1994 Premier Kiichi Murayama, for the first time as the Japanese Prime Minister, visited Vietnam.

2. Economic Relations

After the Cambodian problems emerged, the Japanese trade with Vietnam suffered a setback. But in 1982 it took a favourable turn and since then partly due to the increased import of crude oil, Japan has had an adverse trade balance. In 1991, Japan's exports to and imports from Vietnam were $217 million and $662 million, respectively. Trade is going up by leaps and bounds. The year-on-year increase in Japan's exports was 41.8 per cent; 9.1 per cent and 43.2 per cent in 1993, 1994 and 1995, respectively, reaching $921 million 1995. The corresponding increase in Japan's imports was 22.9 per cent, 26.4 per cent and 27.1 per cent in 1993, 1994 and 1995, respectively, amounting to $1,716 million. Major exports are automobiles, motor bicycles, general machinery and textiles. Major import items are crude oil, frozen shrimps and squid and other marine products. As of now, Japan is the largest trading partner for Vietnam.

Since the enactment of the new Investment Law in April 1972 and especially the peace settlement signed in January 1973, the Japanese investments in South Vietnam

got into full swing, reaching 32 in number and amounting to about $4.6 million. They were nationalized when the government of South Vietnam crumbled and North and South were unified. According to the statistics on foreign direct investment, the cumulative total up to March 1978 of Japan's direct investments in Vietnam, including the above-mentioned ones, on an approval basis, were 33 in number and some $5.2 million in amount. As from 1989, Japan's direct investment was resumed after a decade's absence and has been accelerated since 1992. In 1994, the Japanese direct investment in Vietnam more than doubled in terms of project numbers and almost quadrupled in amount as compared with the previous year and is so far continuing the same pace. In this way, as of the end of September 1995, the cumulative total number is 106 and cumulative total amount is over $296 million. By industry, oil exploitation, joint ventures in the hotel, textile, marine, machinery and food industries are major areas of direct investment.

In May 1994, an aviation convention was concluded between Vietnam and Japan and a direct flight between Ho Chi Minh City and Osak was inaugurated in November of the same year. In February 1996, the State Bank of Socialist Republic of Vietnam approved Bank of Tokyo's plan to open the first branch of a Japanese bank in the country since the termination of the Vietnam War by upgrading its representative office in Ho Chi Minh City to branch status by the end of March.

III. Tax System and Consolidation

The improvement and consolidation of the tax system in Vietnam were started in 1989 and are jet to be completed. Under the circumstances, at the time of writing, many uncertainties still remain.

1. Personal Income Tax

Personal income tax was introduced by the "Ordinance on Income Tax of High Income Earners" of 27 December 1990, replaced by the Ordinance of 19 May 1994. Vietnamese nationals are subject to this tax regardless of whether they are resident in Vietnam or not, while foreigners resident in Vietnam are liable on all their Vietnamese-source income. Individuals are treated as residents if they have stayed in Vietnam for more than 183 days during a calendar year.

Regular income includes salaries, wages, allowances and bonuses and irregular income includes money or other items sent from overseas, income derived from the transfer of technology, income received from construction, engineering or industrial design and lottery prize. The tax rates are as follows: ①Resident Vietnamese nationals whose regular monthly income exceeds 1.2 million VN Dong are liable to tax at the rates ranging from 10 per cent to 60 per cent and ②Foreigners residing in Vietnam and non-resident Vietnamese nationals whose regular monthly income exceeds 5 million VN Dong are liable to tax at the rates ranging from 10 per cent to 50 per

cent.

The tax is collected provisionally on a monthly basis and finalized at the end of the financial year. The annual tax return must be filed no later than February 28. Irregular income tax is levied every time an income transaction occurs or when payment is made.

2. Profits Tax

Business entities are taxed on profits from production and business activities and any other income. While the tax rates applicable to Vietnamese entities are between 30 per cent and 50 per cent depending on the type of activity, those applicable to foreign business organizations are between 15 per cent and 25 per cent by virtue of the Law on Foreign Investment in Vietnam of 29 December 1987. The applicable rate will be greatly influenced by the State Committee for Co-operation and Investment (SCCI) created in March 1989. The SCCI will take into consideration the type of industry, the amount of investment, the geographical region of investment, the percentage of products exported, import substitution and duration of the activity. Profits derived from exploitation of oil and gas are subject to a rate in excess of 25 per cent.[3]

The foreign investor who reinvests part of its profits will receive a refund of the amount of profits tax already paid on that part of those profits. The tax is collected quarterly on a provisional basis. An enterprise must submit to the Tax Office a statement of account and profits tax declaration for that year no later than three months following the fiscal year-end (generally December 31). If the SCCI approves, an alternative year-end may be elected.

Where the investment falls within certain categories of activity such asing high-technology or labor-intensive industries and foreign-currency-earning services and meets certain criteria such as the capital amount and timing of the investment, the SCCI may determine that reduced tax rates may be applied to the income derived from such investment. Various tax incentive measures are discussed below in connection with the provision of tax sparing credit incorporated into the Japan-Vietnam tax treaty.

3. Tax on the Transfer of Profits Abroad

Foreign enterprises are required to pay withholding tax on the repatriation of profits and dividend payments under the Law on Foreign Investment. The withholding tax rares are as follows: ①If foreign enterprise's contribution to the capital of transferring entity is US $ 10 million or more, 5 per cent, ② if such contribution is US $ 5 million or more but less than US $ 10 million, 7 per cent and ③ in all other cases, 10 per cent.

3 For production-sharing contract on exploitation of petroleum, see Michael D. Cannon, "Vietnam", International Bureau of Fiscal Documentation, *The Asian-Pacific Tax Bulletin,* Vol.1, No.10, pp.300–301.

4. Withholding Tax on Royalties (Royalty Tax)

According to the "Ordinance on Royalties" of 30 March 1990, royalty payments made under a licensing contract to use inventions, industrial design, trademarks and the like are subject to the withholding tax at the following rates: ①For a licensing agreement of less than five years or the lump sum payment, 10 per cent, and ②for a licensing agreement of five years or longer, 15 per cent.

5. Sales (Consumption) Tax

(1) Turnover Tax

The Law of 30 June 1990 as amended on 5 July 1993 provide for turnover tax. All business establishments with the exception of those engaged in agricultural production, production of commodities which are subject to special sales (new consumption) tax or production of goods for export are required to pay turnover taxes.

The turnover tax rates vary depending on the nature of the activity concerned and range from a low of 0.5 per cent for the provision of vocational training, for example, to 30 per cent for activities such as lotterries and certain banking operations. Petroleum service contractors, however, will be taxed on turnover at the rates different to those set out in the law on turnover tax. Since no mechanism for the avoidance of double taxation exists, the turnover tax is applicable to each separate enterprise. By virtue of Circular No. 30 dated 12 April 1995, a 25 per cent or 50 per cent reduction of turnover tax is granted to business entities operating in mountainous and highland areas.[4]

(2) Special Consumption Tax

The Law on Special Sales Tax of 30 June 1990 as amended on 5 July 1993 provided for special sales to be imposed on a limited range of consumer goods. Vietnam joined the ASEAN in July last year and, hence, has become a member of the ASEAN Free Trade Area, effective as from 1 January 1996 and is obliged to lower import tariff to 5 per cent or less by 2006, including three years' grace. Partly in order to make up the expected loss of revenue, effective as from 1 January 1996, a special consumption tax on luxury consumer goods has been introduced. The goods affected are tobacco, alcoholic beverage, including beer, and firecrackers, which were hitherto subject to the special sales tax, and imported passenger cars and petroleum products. The rates vary from 15 per cent on petroleum to 100 per cent on imported passenger cars depending on the type of goods. This special consumption tax has a somewhat similar nature to a value added tax.

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4 "VAT Around the World, Vietnam", International Bureau of Fiscal Documentation, *International VAT Monitor,* Vol.6, No.5, pp.322–324.

6. Taxation of Foreign Contractors

Circular No. 37 of 10 May 1995 issued by the Ministry of Finance under the Law on Foreign Investment in Vietnam replaced the single "contractor tax" regime which combined the current profits tax and turnover tax with the separate two taxes effective as from 1 June 1995. Thus, under the new regime, foreign contractors and subcontractors are liable to pay both profits tax and turnover tax separately. The Circular defines a subcontractor as an organization which, or individual who, provides services to a contractor or performs part of the work of a contractor. In addition, contractors and sub-contractors must pay customs duty, personal income tax and taxes on royalties and others in accordance with the current law.[5]

In connection with the change to the separate imposition of profits tax and turnover tax, instead of the former single, consolidated tax, the following should be noted. Even though profits tax is calculated as a percentage of turnover, the turnover for turnover tax purposes and the turnover for profits tax purposes are not necessarily same. Unlike profits tax, turnover tax is not creditable for foreign tax credit purposes. A foreign contractor would probably be entitled to claim foreign tax credit in his home country only in respect of the profits tax paid.

7. Export and Import Duties

The Law on Export and Import Duties on Commercial Goods of 26 December 1991 provides for two rates for each category: the standard rates and the preferential rates. The latter rates are applicable to imports from countries with which Vietnam signed terms for preferential trading relations (formerly member nations of the Council for Mutual Economic Assistance—Commonly known as COMECON) and any country determined by the State.

8. Taxes on Natural Resources

A royalty of between 1 per cent and 40 per cent is imposed on enterprises or foreign contracting parties that exploit any of the natural resources of the country. The actual rate set depends on the condition of exploitation, quality of the natural resources, transport and exploitation expenses and accepted international practices. Metal minerals are subject to rates ranging from 2 per cent to 10 per cent and products of natural forests to rates ranging from 10 per cent to 40 per cent.

IV. Double Taxation Treaty

1. Conclusion of a Treaty

On 24 October 1995 the "Agreement between the Government of Japan and the

5 *Ibid.* and Vol.6, No.6.

Government of the Socialist Republic of Viet Nam for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income" was signed by the Vietnamese Minister of Finance Ho Te and the Japanese Ambassador Katsunari Suzuki in Hanoi. In view of its overriding necessity, the treaty was processed with unprecedented speed by both parties for approval. Thus, the Agreement came into force as from 31 December 1995 and applicable with respect to taxes on income for any taxable year beginning on or after 1 January 1996.

Vietnam signed its first double taxation agreement with Australia on 13 April 1992. As of the end of December 1995, Vietnam has concluded double taxation treaties with the following nine countries: Australia, Thailand, the Republic of Korea, Singapore, France, the United Kingdom, Sweden, the Netherlands and India. For Japan, the Agreement with Vietnam is the 42nd of this kind. The geographical distribution of these 42 countries is as follows: ①North and South America 3, ②Western Europe 15, ③Eastern Europe 6 including two, one each of which is applicable to Czeck and Slovak and the eight (seven on and after 1 January 1996) Republics of the former Soviet Union, ④Asia 12, ⑤Oceania 2, ⑥Africa 2 and Middle East 2. Besides the double taxation treaty with respect to income, Japan has a convention for avoiding double taxation and preventing fiscal evasion with respect taxes on estates, inheritances and gifts with the United States which was signed in April 1954 when Japan first concluded the double taxation treaty on income. On 9 April 1996, Mexico and Japan concluded a double taxtion treaty with respect to income.

The Agreement is intended to eliminate double taxation between the contracting parties, to clarify taxation in other contracting state and to improve cooperation between the tax authorities, thereby contributing to the promotion of international economic, cultural and personnel exchange. Basically, the provisions of the Agreement follow those of the OECD Model Tax Convention ("OECD Model") and other recent treaties to which Japan is a party.

2. Scope of the Treaty

(1) Personal Scope

The person who is a resident of one of the contracting states of this Agreement is primarily liable to tax in his country of residence. For the purposes of this tax treaty, the term "person" includes both an individual and a company and any other body corporate. In case any individual is a resident of both contracting states, his status shall be determined by the criteria set forth in the OECD Model. However, in other cases, the country in which the head or main office is situated is deemed to be a company's country of residence.

It is to be noted that according to paragraph 4 of the Protocol, which forms an integral part of the Agreement, the exemption or reduction of tax provided for in the treaty doens not apply unless any person has a fixed facility necessary for conducting its principal business and manages and controls such business by itself in the other

country. In another word, the tax benefits from this Agreement are not available to the so-called paper company.

(2) Taxes Covered

The Agreement covers the taxes on income which are enumerated individually for each contracting state. In connection with the foreign contractor tax and the foreign petroleum sub-contractor tax of Vietnam, the following should be mentioned. ①Because both taxes include the turnover tax, as regards the both taxes, the Agreement is applicable to the extent to which taxes are considered imposed on profits; and ②A Japanese enterprise carrying on business in Vietnam through a permanent establishment there may claim a refund for the difference between the amount considered to be tax imposed on profits and the final profits tax liability filed if that permanent establishment provides proper information, according to paragraph 2 of the Protocol.

The article concerning the taxation of profits from international transport also covers the enterprise tax of Japan and the similar tax, if any, of Vietnam. Article 25 concerning the exchange of information logically covers other relevant taxes.

3. Business Profits

(1) Permanent Establishment

The profits of an enterprise resident in one country are not taxed in the other country unless the enterprise carries business through a permanent establishment ("PE") situated therein. Only the income attributable to a PE, such as a place of management, branch, office and a factory, is taxable.

As under the United Nations Model Double Taxation Convention between Developed and Developing Countries of 1979 ("UN Model"), a building site, installation or assembly project or supervisory activities thereof which last more than six months and consultancy services which aggregate more than six months within any 12 month period constitute a PE while under the OECD Model only a building site or construction or installation projects which lasts more than 12 months constitutes a PE. In addition, under paragraph 1 of the Protocol, offshore activities for exploration of natural resources are also deemed to constitute a PE if they aggregate more than 30 days within any 12 month period.

An insurance enterprise which collects premium or insures risks in the other country, except in regard to re-insurance, is deemed to have a PE in that other country. Like the OECD Model, the Agreement provides that an independent agent who acts in the ordinary course of his business on behalf of an enterprise of the other contracting state is not deemed to be a PE. However, an agent acting on behalf of an enterprises of the other country is deemed to be a PE, if such an agent habitually concludes contracts in the name of that enterprise or maintains a stock of goods from which he regularly delivers goods on behalf of that enterprise.

(2) International Transport

Profits from international transport business are taxed only in the country of residence of the enterprise as provided for by the OECD Model. In this connection, it should be remembered that some portion (the percentage is to be established through bilateral negotiation under the UN Model and 50 per cent under most of the Japanese treaties with the developing countries in Asia) of the profits from international ocean transport are exempt from taxation at the country of source. In the interest of furtherance of tax exemption on a reciprocal basis, the enterprise tax of Japan and the similar tax, if any, of Vietnam are included in the scope of this mutual tax exemption.

(3) Associated Enterprises

Like the OECD Model, the Agreement provides that profits from the transactions between parent and subsidiary companies and companies under common control may be re-computed using an arm's length basis. This is closely related to the recent important issues of the transfer pricing of goods, technology, trade marks and services of multinational enterprises.

The re-writing of transactions between associated enterprises gives rise to economic double taxation (taxation of the same income in the hands of different persons). In these circumstances, the resident country of the parent company has to make an appropriate corresponding adjustment so as to relieve the double taxation.

4. Income from Capital

(1) Dividends

The maximum tax rate on dividends is 10 per cent regardless of whether they are between parent companies and their subsidiaries or not. Under the OECD Model, the maximum rate between the parent and subsidiary companies is 5 per cent and in all other cases 15 per cent and under most tax treaties to which Japan is a party the former is 10 per cent as of now. All other provisions, including the definition, the treatment of dividends attributable to a PE and a fixed base, prohibition of taxation on dividends from profits of the source in other contracting state by the enterprises operating without PE under certain conditions, follow those of the OECD Model.

(2) Interest

The maximum tax rate on interest is 10 per cent as under the OECD Model and the most tax treaties to which Japan is a party. The UN Model leaves the percentage to bilateral negotiations. However, the interest which the national and local governments, the central bank and government-affiliated institutions receive is exempt from taxation in the source country. Other provisions follow those of the OECD Model.

(3) Royalties

The maximum tax rate on royalties is 10 per cent. While the OECD provides for tax exemption in the source country, Japan reserves the right to tax royalties at source. The UN Model leaves the percentage of the maximum rate of tax at source to bilateral negotiations. In addition to the definition of the OECD Model, the term "royalties" in the Agreement specifically includes software, films or tapes for radio or television broadcasting. It clarifies that, in principle, like interest, royalties are deemed to arise in the resident country of the payer of such royalties. The provisions on royalties are also applicable to the gains from the alienation of property which gives rise to royalties.

5. Capital Gains

In principle, the provisions on capital gains of the Agreement follow those of the OECD Model. Thus, gains derived by a resident of one of the contracting states from the alienation of immovable property situated in other contracting state may be taxed in that other country. Gains from the alienation of any other property are taxable only in the country of which the alienator is a resident. Besides the provisions of the OECD Model concerning capital gains, there are two following special provisions in the Agreements:

① Gains from the alienation of the shares of a company may be taxed in the resident country of the company if at least 25 per cent of the total shares issued are owned by the alienator and persons related to him and at least 5 per cent of the total shares issued were alienated by such persons in one taxable year. The Japanese treaties with the United Kingdom, Austria, Singapore, and Denmark and the revised one with France, which came into force as from 24 March 1996, contain a similar provision.

② Gains from the alienation of the shares of a company whose property primarily consists of immovable property may be taxed in the country where such immovable property is situated. The Japanese treaties with the Philippines, Singapore and the recently revised one with France contain a similar provision.

6. Income from Personal Services

(1) Dependent and Independent Services

Income from dependent personal services, such as salaries and wages of employees, and income from independent services, such as fees and remuneration of physicians and lawyers, are not taxable in the country of source unless the length of the person's stay in that country exceeds in the aggregate 183 days in any 12 months. However, income from independent personal service is taxable only if the person has a fixed base, such as an office and clinic, regularly available to him in that country for the purpose of performing his activities.

The fees for a member of the board of directors of a company may be taxed in the company's country of residence regardless of where the services giving rise to the fees are performed. By its nature, income derived by public entertainers, such as professional sportsmen and artistes, is an exception to rule over taxation of income from dependent and independent services. Such income may be taxed in the country where the entertainers' activities are exercised. It is so taxed even if the entertainer exercises the activities for an enterprise which has neither a PE nor a fixed base in the source country. In all cases, tax exemption is granted under a special program for cultural exchange agreed upon between the both governments.

Like the OECD Model, the Agreement provides that pensions in consideration of past employment is taxable only in the resident country of a recipient while under the UN Model other country may tax the pension in certain cases such as where payments are made under a public scheme or by a PE situated therein. Other provisions on personal services, including government service and students and business apprentices, follow those of the OECD Model. The Agreement does'nt include tax exemption for professors and researchers which OECD Model does not provide for but the Japanese treaties normally grant such exemption for a limited period of two years.

7. Elimination Double Taxation

(1) Credit Method

The OECD Model sets forth two alternatives to relieve the international juridical double taxation (as distinguished from the economic double taxation) on income where the same income or capital is taxed in the hands of the same person by more than one state. These are an exemption method and credit method. Under the former method, the income which may be taxed in one country is not taken account at all by the other country for the purpose of its tax. Under the latter method, the country of residence calculates its tax on the basis of taxpayer's total income including from the other country of source. Then it allows a deduction from its own tax for the tax paid in the other country.

Under the Agreement, both countries employ the credit method. Moreover, a Japanese corporation which owns not less than 25 per cent of the total shares of the Vietnamese corporation is entitled to an indirect foreign tax credit.

(2) Tax Sparing Credit

Tax sparing credit was one of the most controversial issues when the draft UN Model Double Taxation Convention was discussed. While all the developing nations were naturally anxious for the tax sparing credit clause, some developed nations were adamantly opposed to it. Japan's policy has been to accomodate developing countries with tax sparing credit under its tax treaties with a view to supporting their efforts for economic development. Vietnam is the 18th tax treaty partner for Japan to grant a tax sparing credit.

It is to be noted that the tax sparing credit under the Agreement is effective for 15 years and will not apply on after 1 January 2011. By the same token, it may be remembered that the new tax treaty with Singapore which came into force on 28 April 1995 lets the tax sparing credit phase out gradually by the year 2000. The scope of the benefits accorded to taxpayers under the tax incentive measures to which the tax sparing credit is applicable is specified in the Exchange of Notes.

As mentioned earlier, the Law on Foreign Investment in Vietnam provides for a variety of tax incentive measures to promote economic development by inviting investment from abroad. Taking into consideration the various factors mentioned earlier, the SCCI decides on the favourable tax treatments. By virtue of the tax sparing credit of the Agreement, a Japanese business would be deemed to have paid profits tax at the standard rate of 25 per cent and without refund for the purposes of foreign tax credit in Japan, where in Vietnam, ① the business was liable to profits tax at a reduced rate of 15 per cent or 20 per cent, ② the amount of profits tax was reduced by up to 50 per cent for up to two years, ③ to encourage foreign investment, the tax rate is reduced to 10 per cent and ④ a certain amount of tax paid will be refunded if profits are reinvested. Parenthetically, the tax sparing credit is not applicable to investments in hotels, banking, insurance, accountancy businesses, etc.

The tax sparing credit applies to the tax on dividends and royalties for which the maximum rates are provided for in the Agreement. To be more specific, even if the profit remittance tax on a dividend paid by a Vietnamese subsidiary to its Japanese parent company was less than 10 per cent, the Japanese company is entitled to the foreign tax credit as if it had been paid at the rate of 10 per cent.

8. Others

(1) Non-discrimination

The Agreement establishes the principle of non-discrimination in taxation with regard to nationality, PE, payees of income and capital. Paragraph 3 of the Protocol confirms that the non-discrimination clause does not prevent Vietnam from imposing tax on: ① the exploitation of oil, gas and a number of other rare and precious natural resources, ② remittance abroad of the profits of a PE situated in Vietnam and ③ profits from the agricultural production activities derived by a PE situated in Vietnam or by an enterprise wholly or partly owned by Japanese residents.

(2) Others

Like other tax treaties, the Agreement has the articles on mutual agreement procedure and exchange of information. It also features an article on the mutual assistance for collection of taxes. Under the provisions of this article, both contracting states cooperate for the sake of the proper and fair enforcement of the Agreement. For this purpose, each of them should endeavour to collect the tax which any taxpayer in the other state evaded by claiming a tax reduction or exemption to which he was

not entitled under the Agreement. This article is also included in the Japanese tax treaties with the United States, the Netherlands, the Republic of Korea, Norway, Finland, Luxembourg, Turkey and Singapore (most of them are relatively new) although neither OECD Model nor UN Model has such a provision.

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（教授）