

Commissioner's Directive on Mutual Agreement Procedures
National Tax Agency of Japan

This is the official English translation of the Commissioner's Directive on Mutual Agreement Procedures, the original of which is in the Japanese language. The Japanese text prevails in the case of divergence.

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To: Regional Commissioners, Regional Taxation Bureaus
Regional Commissioner, Okinawa Regional Taxation Office

From: Commissioner, National Tax Agency

**Commissioner's Directive on Mutual Agreement Procedures
(Administrative Guidelines)**

The following rules have been established in regard to mutual agreement procedures provided for in tax treaties and should be followed from this point on.

"Commissioner's Directive on the Application Form of Mutual Agreement Procedure" issued on March 3, 1992 [Document ID: Office of International Operations 3-1] and "Commissioner's Directive on Processing the Application for Mutual Agreement Procedure" issued on March 3, 1992 [Document ID: Office of International Operations 3-2] are hereby repealed.

(Purpose)

This Directive clarifies processes in connection with mutual agreement procedures provided for in tax treaties.

Chapter 1: General Rules

1. Definition of Terms

In this Directive, the meanings of the terms listed below shall be as prescribed in the following respectively:

- (a) Tax Treaty: A treaty signed by the Japanese Government for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, or a treaty

- signed by the Japanese Government for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on estates, inheritances and gifts.
- (b) Treaty Partner Nation: A nation with which Japan has concluded a tax treaty.
 - (c) Mutual Consultations: Consultations between the competent authority of Japan and the competent authority of a treaty partner nation pursuant to provisions of a tax treaty.
 - (d) Ministerial Ordinance (Income Tax Convention): The Ministerial Ordinance Implementing the Special Law of the Income Tax Law, the Corporation Tax Law and the Local Tax Law Resulting from Implementation of Tax Conventions (1969 Ministry of Finance/Ministry of Home Affairs Ordinance No. 1).
 - (e) Ministerial Ordinance (Inheritance Tax Convention): The Ministerial Ordinance Implementing the Special Law of the Inheritance Tax Law Resulting from Implementation of the Convention between Japan and the United States of America for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Estates, Inheritances and Gifts (1969 Ministry of Finance Ordinance No. 36).
 - (f) Transfer Pricing Taxation: Taxation based on Section 1 of Article 66-4 [Special Taxation Measures of Transactions between Corporations and Foreign Related Persons] or Section 1 of Article 68-88 [Special Taxation Measures of Transactions between Consolidated Corporations and Foreign Related Persons] of the Special Taxation Measures Law, or similar taxation by a treaty partner nation.
 - (g) Commissioner's Directive on the Operation of Transfer Pricing: The Commissioner's Directive on the Operation of Transfer Pricing (Administrative Guidelines) issued on June 1, 2001 [Document ID: Examination Division 7-1].
 - (h) Commissioner's Directive on the Operation of Transfer Pricing for Consolidated Corporations: The Commissioner's Directive on the Operation of Transfer Pricing for Consolidated Corporations (Administrative Guidelines) issued on April 28, 2005 [Document ID: Examination Division 7-4].
 - (i) APA: An APA prescribed in Section 1-1(22) of the Commissioner's Directive on the Operation of Transfer Pricing (including an arrangement applied to transactions between headquarters and branches described in Section 5-22 of the Commissioner's Directive on the Operation of Transfer Pricing) or in Section 1-1(24) of the Commissioner's Directive on the Operation of Transfer Pricing for Consolidated Corporations, or a similar arrangement or agreement in a treaty partner nation.
 - (j) Tax Return: A Tax Return prescribed in Item 37, Section 1 of Article 2 of the Income Tax Law or prescribed in Item 31 of Article 2 of the Corporation Tax Law, or a tax return prescribed in Items 2 and 3 of Article 1-2 of the Inheritance Tax Law, and documents which should be attached to them.
 - (k) Consolidated Tax Return: A Consolidated Tax Return prescribed in Item 31-3 of Article 2 of the Corporation Tax Law and documents which should be attached to it.
 - (l) Notification of Individual Allocated Amount, etc.: A document prescribed in Items 1 and 2 of Article 81-25 of the Corporation Tax Law that a consolidated subsidiary shall file to the

Director of the Tax Office in charge in the place of the head office or main office of such consolidated subsidiary.

(m) Resident: A resident prescribed in Item 3, Section 1 of Article 2 of the Income Tax Law.

(n) Non-resident: A non-resident prescribed in Item 5, Section 1 of Article 2 of the Income Tax Law.

(o) Domestic Corporation: A domestic corporation prescribed in Item 3 of Article 2 of the Corporation Tax Law.

(p) Foreign Corporation: A foreign corporation prescribed in Item 4 of Article 2 of the Corporation Tax Law.

(q) Consolidated Parent Corporation: Consolidated Parent Corporation prescribed in Item 12-7-2 of Article 2 of the Corporation Tax Law.

(r) Consolidated Subsidiary: Consolidated Subsidiary prescribed in Item 12-7-3 of Article 2 of the Corporation Tax Law.

(s) Consolidated Corporation: Consolidated Corporation prescribed in Item 12-7-4 of Article 2 of the Corporation Tax Law.

(t) Applicant: An individual or a domestic corporation that has filed a request for mutual consultations in Japan.

(u) Foreign Related Person: A foreign related person prescribed in Section 1 of Article 66-4 or Article 68-88 of the Special Taxation Measures Law, or a party of equivalent description prescribed in treaty partner nation's laws or regulations addressing transfer pricing.

(v) Office of Mutual Agreement Procedures: The Office of Mutual Agreement Procedures of the Commissioner's Secretariat of the National Tax Agency.

(w) Related NTA Division: The Taxation Management Division, Individual Taxation Division, Property Taxation Division or Corporation Taxation Division of the Taxation Department of the National Tax Agency; or the Revenue Management Division of the Revenue Management and Collection Department of the National Tax Agency; or the Examination Division of the Examination and Criminal Investigation Department of the National Tax Agency.

(x) Related RTB Division: Taxation Management Divisions, Individual Taxation Divisions, Property Taxation Divisions of First Taxation Departments of Regional Taxation Bureaus (or of Taxation Departments in the cases of the Kanazawa, Takamatsu, and Kumamoto Regional Taxation Bureaus); or Corporation Taxation Divisions of Second Taxation Departments of Regional Taxation Bureaus (or of Taxation Departments in the cases of the Kanazawa, Takamatsu, and Kumamoto Regional Taxation Bureaus); or Revenue Management Divisions of Revenue Management and Collection Departments of Regional Taxation Bureaus; or Management Divisions (Examination) of Examination and Criminal Investigation Departments of Regional Taxation Bureaus (or of First Examination Departments in the cases of the Tokyo and Osaka Regional Taxation Bureaus; or of the Examination Department in the case of the Nagoya Regional Taxation Bureau); or the Taxation Management Division, the Individual Taxation Division, the Property Taxation

Division, the Corporation Taxation Division, the Revenue Management and Collection Division or the Examination Division of the Okinawa Regional Taxation Office.

2. Implementation of Mutual Consultations

(1) The Office of Mutual Agreement Procedures shall deal with mutual consultations related to specific cases.

(Note) The Tax Bureau of the Ministry of Finance shall deal with mutual consultations related to the general interpretation of tax treaties.

(2) The Office of Mutual Agreement Procedures shall endeavor to resolve cases appropriately and rapidly, with the purpose of eliminating taxation not in accordance with provisions of tax treaties.

(3) In the process of mutual consultations, the Office of Mutual Agreement Procedures may exchange opinions with related NTA divisions or other sections as necessary.

(Note) Under Article 8 of the Special Law of the Income Tax Law, the Corporation Tax Law and the Local Tax Law Resulting from the Implementation of Tax Conventions (1969 Law No. 46), the Office of Mutual Agreement Procedures shall consult with the Ministry of Public Management, Home Affairs, Posts and Telecommunications in advance when mutual consultations or the content of mutual consultations is related to taxes imposed by a local government.

Chapter 2: Mutual Consultations Requested by a Resident, Domestic Corporation, etc.

3. Requests for Mutual Consultations

Requests for mutual consultations can be made based on the provisions of an applicable tax treaty, and in accordance with the provisions of Article 12 [Procedures for Requests Related to Taxes Not in Accordance with the Provisions of a Tax Treaty] or Article 13 [Procedures for Requests Related to Dual Residency] of the Ministerial Ordinance (Income Tax Convention) or Article 3 [Procedures for Requests Related to Double Taxation] of the Ministerial Ordinance (Inheritance Tax Convention).

(Note) The following are examples of cases where it is possible to request mutual consultations.

(a) Cases in which a domestic corporation requests mutual consultations because the corporation has been subjected to transfer pricing taxation or it is recognized that the corporation will be subjected to transfer pricing taxation in Japan or in a treaty partner nation regarding transactions between the domestic corporation and its foreign related person.

(b) Cases in which a domestic corporation requests mutual consultations because the corporation has submitted an APA request prescribed in the Commissioner's Directive on the Operation of Transfer Pricing or in the Commissioner's Directive on the Operation of

Transfer Pricing for Consolidated Corporations related to transactions between the domestic corporation and its foreign related person, and requests mutual consultations for such an APA.

- (c) Cases in which a resident or a domestic corporation requests mutual consultations because, regarding the presence of a permanent establishment that is owned by the resident or the domestic corporation and is located in a treaty partner nation, or regarding the amount of income derived from such a permanent establishment, the resident or the corporation considers that the actions of the treaty partner nation result or will result in taxation not in accordance with the provisions of the applicable tax treaty.
- (d) Cases in which a resident or a domestic corporation requests mutual consultations because, regarding withholding income taxes withheld in a treaty partner nation, the resident or the corporation considers that the actions of the treaty partner nation result or will result in taxation not in accordance with the provisions of the applicable tax treaty.
- (e) Cases in which a non-resident who has Japanese nationality requests mutual consultations because the non-resident considers that he or she is subjected to, or will be subjected to, any taxation or any requirement connected therewith in a treaty partner nation which is more burdensome than the taxation and connected requirements to which nationals of the treaty partner nation are subjected.
- (f) Cases in which a resident of Japan who is also a resident of a treaty partner nation under the provisions of laws of the treaty partner nation requests mutual consultations in order to determine the nation of which the said individual is deemed to be a resident.
- (g) Cases in which an individual who is liable for inheritance tax or gift tax under the Inheritance Tax Law requests mutual consultations in order to avoid double taxation under Article 3 of the Ministerial Ordinance (Inheritance Tax Convention).

4. Time Limit

It is to be noted that some tax treaties have provisions that set time limits governing requests for mutual consultations, as shown in the Appendix.

5. Pre-filing Meeting

- (1) The Office of Mutual Agreement Procedures shall accept proposals for pre-filing meetings prior to requesting mutual consultations, including meetings on an anonymous basis through representatives.
- (2) The related NTA divisions or the division-in-charge of the RTBs (as prescribed in Section 5-6 of the Commissioner's Directive on the Operation of Transfer Pricing or in Section 5-6 of the Commissioner's Directive on the Operation of Transfer Pricing for Consolidated Corporations), upon a request by the Office of Mutual Agreement Procedures, may participate in pre-filing meetings as necessary.

(Note) Since the division-in-charge of the RTBs, which is in charge of APA review, also accepts proposals for pre-filing meetings prior to APA requests (refer to Section 5-6 of the Commissioner's Directive on the Operation of Transfer Pricing or in Section 5-6 of the Commissioner's Directive on the Operation of Transfer Pricing for Consolidated Corporations), it is to be noted that prospective applicants can request pre-filing meetings to either the Office of Mutual Agreement Procedures or the division-in-charge of the RTBs.

- (3) Where the Office of Mutual Agreement Procedures has accepted a proposal for a pre-filing meeting prescribed in (1), it may, as necessary, request the related NTA divisions to implement measures to retain the documents necessary for mutual consultations or for implementing the mutual agreement resulting from mutual consultations. These documents may include tax returns (in the case of consolidated corporations, consolidated tax returns and notifications of individual allocated amount, etc.), letters of assessment, examination documents of withholding tax, tax collection cards, and others (hereinafter collectively referred to as "tax returns, etc.").
- (4) After receiving the request from the Office of Mutual Agreement Procedures to implement measures to retain tax returns, etc. as described in (3), the related NTA divisions shall instruct the related RTB divisions not to dispose of the tax returns, etc. even if the document retention periods provided by Chart 4 of the National Tax Agency Regulation 2000-1 [Regulation Regarding Treatments of Administrative Documents of the National Tax Agency] have been exceeded.
- (5) After receiving the instruction described in (4) from the related NTA divisions, the related RTB divisions shall provide the necessary instructions to the District Director of the Tax Office with jurisdiction.

6. Procedures for Requesting Mutual Consultations

- (1) Requests for mutual consultations shall be made by submitting two copies of the Application for Mutual Consultations (attached Form 1) and one set of the attachments described below (hereinafter referred to as "attachments") to the District Director of the Tax Office with jurisdiction over the place of tax payment.
Requests for mutual consultations for taxation on the transactions of consolidated subsidiaries and for APAs on transactions between consolidated subsidiaries and foreign related persons shall be made by submission by said consolidated parent corporation of a request for mutual consultations to the District Director of the Tax Office with jurisdiction over the place of tax payment.
 - (a) In cases where the request is related to taxation in Japan or in a treaty partner nation: Copies of the letter of assessment or other documents that substantiate the tax issue, a written description of the details of facts related to the tax issue, and a written outline of the position of the applicant or its foreign related person regarding the tax issue. (If the tax has yet to be assessed: Written details of the conditions

supporting the expectation that the tax issue will arise, and a written outline of the position of the applicant or its foreign related person regarding the tax issue.)

- (b) In cases where the request is related to taxation in Japan or in a treaty partner nation, and the applicant or its foreign related person has filed an administrative appeal or a lawsuit regarding the tax issue: In addition to the documents described in (a), documents indicating that an administrative appeal or a lawsuit has been filed, and a written outline of the position of the applicant or its foreign related person regarding the tax issue in the administrative appeal or the lawsuit, together with copies of the application for the administrative appeal or the lawsuit.
 - (c) In cases where the request is related to transfer pricing taxation in Japan or in a treaty partner nation: In addition to the documents described in (a), documents describing the direct or indirect capital relationship or the actual control relationship that exists between the parties involved in the transactions which are the subject of the request.
 - (d) In cases where the request is related to Article 13 [Procedures for Requests Related to Dual Residency] of the Ministerial Ordinance (Income Tax Convention), and the applicable tax treaty or intergovernmental agreements appended to the treaty include specifications for items that should be considered in mutual consultations: Documents explaining those items.
 - (e) In cases where the applicant or its foreign related person has filed a request for mutual consultations to the competent authority of the treaty partner nation: A copy of the documents substantiating that fact.
 - (f) Other documents that would explain issues relevant to mutual consultations.
- (2) The District Director of the Tax Office with jurisdiction over the place of tax payment of the applicant shall retain one copy of the Application for Mutual Consultations and forward the other copy to the Office of Mutual Agreement Procedures together with the attachments.
- (Note) Where requests for mutual consultations are related to an APA, the related documents shall be attached to the Application for an APA or a consolidated APA and sent by the District Director of the Tax Office with jurisdiction, or the Regional Commissioner of the Regional Taxation Bureau or the Okinawa Taxation Office with jurisdiction, to the Office of Mutual Agreement Procedures via a related NTA division (refer to Sections 5-1 to 5-5 of the Commissioner's Directive on the Operation of Transfer Pricing or Sections 5-1 to 5-5 of the Commissioner's Directive on the Operation of Transfer Pricing for Consolidated Corporations).

7. Measures for Retaining Tax Returns and Other Documents

- (1) Where the Office of Mutual Agreement Procedures has received an Application for Mutual Consultations and attachments as described in 6(2), it shall inform the related NTA divisions that it has received a request for mutual consultations with a copy of the

Application for Mutual Consultations attached, and shall request them to implement measures to retain tax returns, etc. of applicant (in cases where the transactions involve consolidated subsidiaries, not only the tax returns, etc. of the applicant, but also the tax returns, etc. of consolidated subsidiaries).

- (2) After receiving the request from the Office of Mutual Agreement Procedures to implement measures to retain tax returns, etc. as described in (1), the related NTA divisions shall provide instructions to the related RTB divisions as provided in 5(4).
- (3) After receiving the instructions described in (2) from the related NTA divisions, the related RTB divisions shall provide the necessary instructions to the District Director of the Tax Office with jurisdiction over the place of tax payment of the applicant (in cases where said request is for transactions involving consolidated subsidiaries, not only the District Director of the Tax Office with jurisdiction over the place of tax payment of the applicant, but also the District Director of the Tax Office with jurisdiction over the said consolidated subsidiaries).

8. Review of Items to Be Included in the Application for Mutual Consultations

- (1) Where the contents of the Application for Mutual Consultations or the attachments have any deficiencies, the Office of Mutual Agreement Procedures shall request the applicant to correct them.
- (2) Where the request for mutual consultations involves a tax assessment in Japan, the Office of Mutual Agreement Procedures shall request copies of the documents explaining the details of the subject's tax situation (if taxes are yet to be assessed, an outline of the relevant facts) from the related NTA divisions.

9. Submission of Documents

The Office of Mutual Agreement Procedures shall request the applicant to submit the documents that are considered necessary for the pursuit of mutual consultations.

10. Submission of Translated Documents

The Office of Mutual Agreement Procedures shall, as necessary, request the applicant to attach Japanese translations of attachments or other documents that are submitted in a foreign language.

11. Explanations of Submitted Documents

The Office of Mutual Agreement Procedures shall, as necessary, request the applicant (in cases where said application is for transactions involving consolidated subsidiaries, the applicant or said consolidated subsidiaries) to submit explanations of attachments or other documents.

12. Communicating Changes to Submitted Documents, etc.

- (1) The Office of Mutual Agreement Procedures shall seek to have the applicant contact the Office without delay in the event that an error or significant discrepancy is detected in the Application for Mutual Consultations, attachments, or other documents.
- (2) The Office of Mutual Agreement Procedures shall seek to have the applicant contact the Office without delay to update the status of the tax disposition, administrative appeal, APA review, etc. in the treaty partner nation.

13. Proposal for Mutual Consultations to the Competent Authority of the Treaty Partner Nation

- (1) Where the Office of Mutual Agreement Procedures has received an Application for Mutual Consultations and attachments as described in 6(2) and the request is considered to have merit for mutual consultations, the Office of Mutual Agreement Procedures shall, except in the cases given below, propose to commence mutual consultations to the competent authority of the treaty partner nation. The Office of Mutual Agreement Procedures, however, shall not propose to commence mutual consultations when a proposal for mutual consultations from the competent authority of the treaty partner nation has already been received in regard to taxation, an APA, etc. that is related to the request for mutual consultations.
 - (a) Cases in which the applicant has not corrected deficiencies in the contents of its Application for Mutual Consultations or attachments, even though requested to do so by the Office of Mutual Agreement Procedures.
 - (b) Cases in which the applicant has not requested an APA prescribed in the Commissioner's Directive on the Operation of Transfer Pricing or the Commissioner's Directive on the Operation of Transfer Pricing for Consolidated Corporations even though the request for mutual consultations is for a bilateral or multilateral APA.
- (2) The Office of Mutual Agreement Procedures shall notify the applicant when it does not propose mutual consultations to the competent authority of the treaty partner nation except as given in the second sentence of (1).
- (3) Where the Office of Mutual Agreement Procedures has provided a notification to the applicant as described in (2), it shall inform the related NTA divisions and the District Director of the Tax Office with jurisdiction of the fact.

14. Treatment in Cases Where a Corporation Becomes a Consolidated Corporation by Joining a Consolidated Corporation Group and in Cases Where a Consolidated Corporation Becomes a Corporation by Seceding from a Consolidated Corporation Group or Joins Another Consolidated Corporation Group

- (1) In cases where a corporation becomes a consolidated corporation after submitting an Application for Mutual Consultations, or in cases where a consolidated corporation engaged in transactions which are the subject of a request for mutual consultations joins another

consolidated corporation group: If they continue to request mutual consultations after such structural reorganization, the Office of Mutual Agreement Procedures shall request the applicant to submit without delay three copies of the attached Form 5 [Notification of becoming or joining a consolidated corporation group, etc. and continuing a request of mutual consultations] to the District Director of the Tax Office with jurisdiction over the place of tax payment of the applicant.

(2) In cases where a consolidated corporation engaged in transactions which are the subject of a request for mutual consultations secedes from a consolidated corporation group and becomes a simple corporation: If the corporation continues to request mutual consultations after such structural reorganization, the Office of Mutual Agreement Procedures shall request the applicant to submit without delay three copies of the attached Form 5 [Notification of seceding from a consolidated corporation group, etc. and continuing a request of mutual consultations] to the District Director of the Tax Office with jurisdiction over the place of tax payment of the applicant.

(3) Where the Office of Mutual Agreement Procedures has received a notification as described in (1) and (2), the District Director of the Tax Office with jurisdiction over the place of tax payment of the applicant shall retain one copy of it and forward one copy each to the District Director of the Tax Office with jurisdiction over the place of tax payment of the original applicant and to the Office of Mutual Agreement Procedures.

(4) Where the Office of Mutual Agreement Procedures has received a notification described in (1) and (2), it shall inform the related NTA divisions that it has received a notification with a copy of it and also notify the competent authority of the treaty partner nation.

(5) After receiving the notification described in (1) and (2) from the Office of Mutual Agreement Procedures, the related NTA division shall notify the related RTB divisions.

(6) In cases where the applicant submitted the notification, the Office of Mutual Agreement Procedures treats the corporation of the applicant as having submitted the request for mutual consultations to the District Director of the Tax Office with jurisdiction over the applicant and applies this Commissioner's Directive on Mutual Agreement Procedures to the applicant after that.

15. Updating Applicants on the Status of Mutual Consultations

The Office of Mutual Agreement Procedures shall, upon request from the applicant (in cases where a request for mutual consultations is for transactions involving consolidated subsidiaries, the applicant or said consolidated subsidiary; hereinafter the same in this section) or when necessary, update the applicant on the status of mutual consultations to the extent that it does not interfere with the mutual consultations.

16. Confirmation of Applicant's Intentions before Reaching Agreement

(1) Where it is recognized that an agreement will be reached with the competent authority of the treaty partner nation, the Office of Mutual Agreement Procedures shall inform the

applicant of the contents of the proposed agreement in writing, and confirm whether or not the applicant accepts the contents of the proposed agreement.

- (2) The Office of Mutual Agreement Procedures shall reach a mutual agreement with the competent authority of the treaty partner nation after confirming that the applicant accepts the contents of the proposed agreement.

17. Notification of Mutual Agreements

- (1) Where a mutual agreement has been reached in mutual consultations, the Office of Mutual Agreement Procedures shall notify the applicant with attached Form 2 (notification that a mutual agreement has been reached) of the date and contents of the agreement.
- (2) After providing the notification described in (1), the Office of Mutual Agreement Procedures shall inform the related NTA divisions and the District Director of the Tax Office with jurisdiction over the place of tax payment of the applicant of the fact, with a duplicate of the notification form attached.
- (3) After receiving the notification described in (2) from the Office of Mutual Agreement Procedures, the related NTA division shall instruct the related RTB divisions to take the actions called for by the mutual agreement, in accordance with the applicable tax treaty, laws and directives.
- (4) After receiving the instructions described in (3) from the related NTA division, the related RTB division shall give the instructions necessary to take the actions called for by the mutual agreement to the District Director of the Tax Office with jurisdiction over the place of tax payment of the applicant.

18. Termination of Mutual Consultations

- (1) In the following cases, the Office of Mutual Agreement Procedures shall propose to the competent authority of the treaty partner nation that mutual consultations be terminated.
 - (a) Cases in which it has been determined, after mutual consultations have begun, that the subject of the request for mutual consultations is not a subject to be discussed in mutual consultations under the applicable tax treaty.
 - (b) Cases in which the applicant has withdrawn the request for the APA when the request for mutual consultations is related to an APA.
 - (c) Cases in which the Application for Mutual Consultations or the attachments thereto are found to contain false entries.
 - (d) Cases in which the applicant does not cooperate in providing the documents necessary for mutual consultations.
 - (e) Cases in which it is impossible to assemble the documents necessary for mutual consultations because a significant amount of time has elapsed since the assessment of taxes in Japan or in the treaty partner nation, or because of other reasons.

- (f) Cases in which the applicant does not accept the proposed agreement in response to the inquiry described in 16 (1).
 - (g) Cases in which it is recognized that the continuation of mutual consultations will not result in an appropriate solution.
- (2) Where the competent authority of the treaty partner nation has accepted the proposal from the Office of Mutual Agreement Procedures described in (1), or the Office of Mutual Agreement Procedures has accepted a proposal from the competent authority of a treaty partner nation to terminate mutual consultations, the Office of Mutual Agreement Procedures shall notify the applicant by attached Form 3 (notification that mutual consultations have been terminated) that mutual consultations have been terminated.
 - (3) After providing the notification described in (2), the Office of Mutual Agreement Procedures shall inform the related NTA divisions and the District Director of the Tax Office with jurisdiction over the place of tax payment of the applicant of the fact.

19. Withdrawal of Requests for Mutual Consultations

- (1) After requesting mutual consultations, an applicant can withdraw the request for mutual consultations any time before receiving the notification described in 13 (2) [notification that mutual consultations will not be proposed], the notification described in 17 (1) [notification that a mutual agreement has been reached], or the notification described in 18 (2) [notification that mutual consultations have been terminated].
- (2) Withdrawals of requests for mutual consultations shall be made by submitting two copies of attached Form 4 (notification of withdrawal of requests for mutual consultations) to the District Director of the Tax Office with jurisdiction over the place of tax payment of the applicant.
- (3) The District Director of the Tax Office with jurisdiction over the place of tax payment of the applicant shall retain one copy of the notification of withdrawal and forward another copy to the Office of Mutual Agreement Procedures.
- (4) After receiving the notification of withdrawal as described in (3), the Office of Mutual Agreement Procedures shall notify the competent authority of the treaty partner nation of termination of mutual consultations because the applicant submits the notification of withdrawal. The Office of Mutual Agreement Procedures shall also notify the related NTA divisions that the request for mutual consultations has been withdrawn, with a duplicate of the notification of withdrawal attached.

20. Cancellation of Document Retention Measures

- (1) After the Office of Mutual Agreement Procedures has asked the related NTA divisions to implement measures to retain tax returns, etc. as described in 5 (3) and 7 (1), where the retention measures have become unnecessary because (i) mutual consultations have not been proposed to the competent authority of the treaty partner nation, (ii) mutual consultations have resulted in a mutual agreement, (iii) mutual consultations have been

- terminated without reaching a mutual agreement, or (iv) the request for mutual consultations has been withdrawn, the Office of Mutual Agreement Procedures shall notify the related NTA divisions that the retention measures are no longer necessary.
- (2) After receiving the notification described in (1) from the Office of Mutual Agreement Procedures, the related NTA division shall instruct the related RTB divisions to cancel the document retention measures.
- (3) After receiving the instructions described in (2) from the related NTA division, the related RTB divisions shall provide the necessary instructions to the District Director of the Tax Office with jurisdiction over the place of tax payment of the applicant (in cases where said request is for transactions involving consolidated subsidiaries, not only the District Director of the Tax Office with jurisdiction over the place of tax payment of the applicant, but also the District Director of the Tax Office with jurisdiction over the said consolidated subsidiaries).

Chapter 3: Mutual Consultations Proposed by the Competent Authority of a Treaty Partner Nation

21. Procedures Applied to the Proposal for Mutual Consultations

- (1) Where the Office of Mutual Agreement Procedures has received a proposal for mutual consultations in accordance with an applicable tax treaty from the competent authority of a treaty partner nation, the Office of Mutual Agreement Procedures shall notify the related NTA divisions of the items given below, and shall request them to implement measures to retain tax returns, etc., except where the subject of mutual consultations is transfer pricing or an APA and a domestic corporation is a party to the transaction at issue, or where the subject of mutual consultations is an APA and a permanent establishment which is owned by a foreign corporation and is located in Japan is a party to the transaction at issue.
- (a) Name of the treaty partner nation which has made the proposal.
- (b) Date on which the proposal was received.
- (c) In cases where the proposal involves a tax assessment in Japan on a non-resident or a foreign corporation: The name of the non-resident or foreign corporation, address of the non-resident or the address of the headquarters or main office of the foreign corporation, the time period or taxation years to be covered by mutual consultations, the date of the assessment of the tax, and the name and address of the tax representative in Japan if one has been specified.
- (d) In cases where the proposal involves a tax assessment in Japan on a permanent establishment which is owned by a non-resident or a foreign corporation and is located in Japan: In addition to the items given in (c), the name and address of the permanent establishment.

- (e) In cases where the proposal involves transfer pricing taxation in Japan and a permanent establishment which is owned by a non-resident or a foreign corporation and is located in Japan is a party to the transaction at issue: In addition to the items given in (c) and (d), the name and address of the other party to the transaction.
- (f) In cases where the proposal involves a withholding tax paid by a withholding agency in Japan: The name and address of the withholding agency, the name of the party which received the payment from which the withholding tax was withheld, the character of the payment, the time period to be covered by mutual consultations, etc.
- (g) In cases where the proposal is for determining the country of residence of an individual: The name and address of the individual, the years to be covered by mutual consultations, etc.
- (h) Other useful information.

(Note) In cases that fall under (c) to (f), requests for mutual consultations cannot be made in Japan, and mutual consultations will begin only after receiving a proposal from the competent authority of a treaty partner nation. In cases that fall under (g), there are occasions in which the individual in question does not request mutual consultations in Japan.

- (2) After receiving the request from the Office of Mutual Agreement Procedures to implement measures to retain tax returns, etc. as described in (1), the related NTA divisions shall instruct the related RTB divisions not to dispose of tax returns, etc. as prescribed in 5 (4), even if the document retention periods have been exceeded.
- (3) After receiving the instruction described in (2) from the related NTA divisions, the related RTB divisions shall provide the necessary instructions to the District Director of the Tax Office with jurisdiction.

22. Procedures Applied to the Proposal for Mutual Consultations in Transfer Pricing Cases

- (1) Where a proposal for mutual consultations in accordance with the applicable tax treaty from the competent authority of a treaty partner nation has been received, and if the subject of the proposal is transfer pricing and a domestic corporation is a party to the transaction at issue, the Office of Mutual Agreement Procedures shall confirm whether or not the domestic corporation has requested mutual consultations in accordance with the provisions of this Directive.
- (2) If, as a result of the action described in (1), it is confirmed that the domestic corporation has requested, or will request, mutual consultations, the procedures prescribed in Chapter 2 of this Directive shall be followed.
- (3) If, as a result of the action described in (1), it is confirmed that the domestic corporation will not request mutual consultations, the procedures given in 28 shall be followed.

23. Procedures Applied to the Proposal for Mutual Consultations in APA Cases (Domestic Corporation)

- (1) Where a proposal for mutual consultations in accordance with the applicable tax treaty from the competent authority of a treaty partner nation has been received, and if the subject of the proposal is an APA and a domestic corporation is a party to the transaction at issue, the Office of Mutual Agreement Procedures shall confirm whether or not the domestic corporation has requested mutual consultations in accordance with the provisions of this Directive, and whether or not the domestic corporation has requested an APA in accordance with the provisions of Chapter 5 of the Commissioner's Directive on the Operation of Transfer Pricing or Chapter 5 of the Commissioner's Directive on the Operation of Transfer Pricing for Consolidated Corporations.
- (2) If, as a result of the action described in (1), it is confirmed that the domestic corporation has requested, or will request, both mutual consultations and an APA, the procedures prescribed in Chapter 2 of this Directive shall be followed.
- (3) If, as a result of the action described in (1), it is confirmed that the domestic corporation will request either mutual consultations or an APA, or neither of them, the procedures given in 28 shall be followed.

24. Procedures Applied to the Proposal for Mutual Consultations in APA Cases (Foreign Corporation)

- (1) Where a proposal for mutual consultations in accordance with the applicable tax treaty from the competent authority of a treaty partner nation has been received, and if the subject of the proposal is an APA and a permanent establishment which is owned by a foreign corporation and is located in Japan is a party to the transaction at issue, the Office of Mutual Agreement Procedures shall confirm whether or not the permanent establishment has requested an APA in accordance with the provisions of Chapter 5 of the Commissioner's Directive on the Operation of Transfer Pricing.
- (2) If, as a result of the action described in (1), it is confirmed that the permanent establishment of the foreign corporation has requested, or will request, an APA, the Office of Mutual Agreement Procedures shall notify the related NTA divisions of the items given in 21(1) (a) and (b), and seek to have measures to retain tax returns, etc. implemented. Then, the procedures given in 21(2) and (3), and in 26 to 29 shall be followed.
- (3) If, as a result of the action described in (1), it is confirmed that the permanent establishment of the foreign corporation will not request an APA, the procedures given in 28 shall be followed.

25. Notification to Withholding Agencies after Receiving Proposal for Mutual Consultations in Withholding Tax Cases

Where a proposal for mutual consultations in accordance with the applicable tax treaty from the competent authority of a treaty partner nation has been received, and if the

proposal involves a withholding tax paid by a withholding agency in Japan, the Office of Mutual Agreement Procedures shall notify the withholding agency of the fact that the proposal for mutual consultations has been made by the competent authority of the treaty partner nation.

26. Submission of Documents, etc.

- (1) The Office of Mutual Agreement Procedures shall, as necessary, request individuals or corporations that are the subject of the tax assessment that is the focus of mutual consultations to submit documents and to provide explanations.
- (2) The Office of Mutual Agreement Procedures shall, as necessary, request the individuals or corporations to attach Japanese translations of documents mentioned in (1) that are submitted in a foreign language.

27. Notification of Mutual Agreement

- (1) Where a mutual agreement has been reached as a result of mutual consultations, the Office of Mutual Agreement Procedures shall notify the related NTA divisions of the date and contents of the agreement.
- (2) After receiving the notification described in (1) from the Office of Mutual Agreement Procedures, the related NTA divisions shall instruct the related RTB divisions to take the actions called for by the mutual agreement, in accordance with the applicable tax treaty, laws and regulations.
- (3) After receiving the instructions described in (2) from the related NTA divisions, the related RTB divisions shall give the instructions necessary to take the actions called for by the mutual agreement to the District Director of the Tax Office with jurisdiction over the place of tax payment of the applicant.
- (4) Where a mutual agreement has been reached in mutual consultations in a case that involves a withholding tax paid by a withholding agency in Japan, the Office of Mutual Agreement Procedures shall explain the contents of the agreement to the withholding agency.
- (5) The procedures for refund of all or part of the withholding tax paid by a withholding agency in Japan in the wake of the mutual agreement in mutual consultations are as follows:
 - (a) Where the withholding tax at issue was voluntarily paid by the withholding agency, the tax amounts will be refunded on the submission of a Request for Refund of Overpayment of Withholding Taxes from the withholding agency. In this case, the Office of Mutual Agreement Procedures shall request the withholding agency to submit the Request for Refund of Overpayment of Withholding Taxes.
 - (b) Where the withholding tax at issue was paid on receiving the notification of tax payments, the taxes shall be refunded to the withholding agency without a request by the withholding agency.

28. Termination of Mutual Consultations

- (1) In the following cases, the Office of Mutual Agreement Procedures shall propose to the competent authority of the treaty partner nation that mutual consultations be terminated.
 - (a) Cases in which it has been determined that the subject of the proposal for mutual consultations is not a subject to be discussed in mutual consultations under the applicable tax treaty.
 - (b) Cases in which it has been confirmed as a result of the action described in 22(1) that the domestic corporation (in cases of a consolidated subsidiary, its consolidated parent corporation) will not request mutual consultations.
 - (c) Cases in which it has been confirmed as a result of the action described in 23(1) that the domestic corporation (in cases of a consolidated subsidiary, its consolidated parent corporation) will request either mutual consultations or an APA, or neither of them.
 - (d) Cases in which it has been confirmed as a result of the action described in 24(1) that the permanent establishment of the foreign corporation will not request an APA.
 - (e) Cases in which the party who is the subject of the tax assessment that is the focus of mutual consultations does not cooperate in providing the documents necessary for mutual consultations.
 - (f) Cases in which it is impossible to assemble the documents necessary for mutual consultations because a significant amount of time has elapsed since the assessment of taxes in Japan or in the treaty partner nation, or because of other reasons.
 - (g) Cases in which it is recognized that the continuation of mutual consultations will not result in an appropriate solution.
- (2) Where the competent authority of the treaty partner nation has accepted the proposal from the Office of Mutual Agreement Procedures described in (1), or the Office of Mutual Agreement Procedures has accepted a proposal from the competent authority of a treaty partner nation to terminate the mutual consultations, the Office of Mutual Agreement Procedures shall notify the related NTA divisions that the mutual consultations have been terminated.
- (3) Where the mutual consultations have been terminated and the mutual consultations involve a withholding tax paid by a withholding agency in Japan, the Office of Mutual Agreement Procedures shall notify the withholding agency that the mutual consultations have been terminated.

29. Cancellation of Document Retention Measures

- (1) After the Office of Mutual Agreement Procedures has asked the related NTA divisions to implement measures to retain tax returns, etc. as described in 21(1), where the retention measures have become unnecessary because a mutual agreement has been reached, or because mutual consultations have been terminated without reaching a mutual

- agreement, the Office of Mutual Agreement Procedures shall notify the related NTA divisions that the retention measures are no longer necessary.
- (2) After receiving the notification described in (1) from the Office of Mutual Agreement Procedures, the related NTA divisions shall instruct the related RTB divisions to cancel the document retention measures.
 - (3) After receiving the instructions described in (2) from the related NTA divisions, the related RTB divisions shall provide the necessary instructions to the District Director of the Tax Office with jurisdiction.

Chapter 4: Proposal for Mutual Consultations without a Request
by a Resident, Domestic Corporation, etc.

30. Proposal for Mutual Consultations without a Request by a Resident, Domestic Corporation, etc.

When necessary, the Office of Mutual Agreement Procedures shall propose mutual consultations to the competent authority of a treaty partner nation without receiving an Application for Mutual Consultations prescribed in 6 of Chapter 2.

(Note) The following are examples of cases where a proposal for mutual consultations may be made to the competent authority of a treaty partner nation without a request from a resident, domestic corporation, etc.

- (a) In order to cancel a mutual agreement reached previously because false information included in the documents submitted by an applicant, etc. formed the basis of the mutual agreement.
- (b) In order to start another mutual consultation because a critical assumption included in a mutual agreement reached previously on an APA has not been met.
- (c) In order to cancel a mutual agreement reached previously because a reason for cancellation specified in Section 5-19 of the Commissioner's Directive on the Operation of Transfer Pricing or in Section 5-19 of the Commissioner's Directive on the Operation of Transfer Pricing for Consolidated Corporations has arisen in an APA related to the mutual agreement.

31. Measures for Retaining Tax Returns and Other Documentation

- (1) Where the Office of Mutual Agreement Procedures has made a proposal described in 30, it shall notify the related NTA divisions of the fact and provide them with an outline of its request, and shall request them to implement measures to retain tax returns, etc.
- (2) After receiving the request from the Office of Mutual Agreement Procedures to implement measures to retain tax returns, etc. as described in (1), the related NTA divisions shall provide instructions to the related RTB divisions as provided in 5(4).

- (3) After receiving the instructions described in (2) from the related NTA divisions, the related RTB divisions shall provide the necessary instructions to the District Director of the Tax Office with jurisdiction of resident, domestic corporation, etc. (in cases where said request is for consolidated subsidiaries, then its consolidated parent corporation and said consolidated subsidiary).
- (4) 26 to 29 shall apply to mutual consultations initiated in accordance with 30.

32. Notification That Mutual Agreement Procedures Have Been Proposed, etc.

- (1) Where the Office of Mutual Agreement Procedures has made a proposal described in 30, it shall notify the individuals or corporations (in cases where the domestic corporation, etc. engaged in the transactions subject to taxation is a consolidated subsidiary, then its consolidated parent corporation; hereinafter the same in this section) of following items.
 - (a) Date of the proposal.
 - (b) Name of the treaty partner nation to which the proposal was made.
 - (c) Contents of the proposal.
 - (d) Reason for the proposal.
 - (e) Other useful information.
- (2) Where a mutual agreement has been reached in mutual consultations, the Office of Mutual Agreement Procedures shall notify the individual or corporation referred to in (1) of the contents of the agreement.
- (3) Where mutual consultations have been terminated without reaching a mutual agreement, the Office of Mutual Agreement Procedures shall notify that fact to the individuals or corporations referred to in (1).

Note: Appendix (list of tax treaties that provide for time limit) and attached Forms 1, 2, 3, 4 and 5 are omitted in this English text.