Japanese judgments on Interest Income:

Cases on Money Lending Business and on Bank Transactions

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Abstract

Under Japanese Income Tax Act income as tax base is divided into ten categories. One of them is Interest Income, which mainly consists of interest on deposits and savings. For that category special tax treatments are applicable, in particular those who pay it within Japan have to withhold income tax on it. For that reason, what falls within deposits and interest thereon was issued on Lower Courts. Judgments can be bunched up into two categories in light of common facts. For the aim of grabbing the rationale, it may be useful to overview them in chronological order because each judgment affected and referred each other.

Tendencies of judgments were divided into. One is to observe the way of collecting money in light of contracts of Deposits for Consumption stipulated Civil Code. The other is to focus on feature of the way of collecting money in light with economic nature of deposits. These two are not integrated. But by watching over details, we can deduct some common feature on deposits as follows; One party, *i.e.* financial institution or those who want funds, collect money from the other, *i.e.* the numerous and unspecified, in accordance with Agreements prepared by the former in advance as well as backed by credibility of the former. The former don't have to retain the collected money itself, can appropriate it for its own funds for business and pay back by preparing for the same amount.

Keywords: Interest Income, Income Tax Act, deposits, Financial Transactions, Deposits for Consumption

1　Introduction

Japanese Income Tax Act (*shotoku zei hou*)[1] adopts so called scheduler system. Income is

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As precedent work, *see* Suzuki, *Qualification as Interest Income on Japanese Income Taxation: An introductory inquiry into Income Taxation on "Foreign" Interst*, 8 J. of Graduate Institute for Entrepreneurial Studies 1 (2017). Following statements are partially overlapped with.

divided into ten items. These items include Interest Income (*rishi shotoku*)[2] . Central part thereof is “interest on deposits and savings (*yochokin no rishi*)”. That means interest derived from money deposited to banks or other financial institutions[3]. For example, interest on loan between individuals doesn’t fall within it.

Those who pay Interest Income to resident individuals and resident corporations must withhold Income Tax if that payment is done within Japan[4]. Under special measure such Interest Income is separated with other items of income on taxation[5]. It follows that the amount withheld lead to final tax burden because there is no room for deduction of expenses or allowances[6].

Concerning on this Interest Income, Japanese Lower Courts made judgments on whether or not some payments by companies fell within or not. By observing, these judgments were found to have been influenced with each other and been developed gradually. So followings are introductions and analyses of these in chronological order and trial of grab what these really wanted to say.

2　Cases on Money Lending Business Companies on 1960’s

2. 1　Background

Tax treatment of Interest Income was almost the same as it is today. One difference was the scope of it. “(I)nterest on…savings” was not included and there was no requirement of “derived from money deposited to banks or other financial institutions”[7].

Concerning on financial transactions, some legislations had been enacted[8]. Even now we can see a series of legislative provisions[9]. Banks engage in Banking, which consist of acceptance of deposits as well as the lending of funds. Those who intend to engage in Banking have to acquire license from the Prime Minster, and are subject to administration by governmental bodies. Persons without license but having run Banking are subject to punishment. These are because banks collect bulk money from a large number of the general public without securities and many people will be affected if they go bankrupt. In contrast, for those who intend to engage in Money Lending Business other than banks, which consist of loaning money or acting as an intermediary for the lending or borrowing of money on a regular basis, lighter procedures are required than in the case of Banking. On the other hand they are prohibited from receiving monies from numerous and unspecified persons, which include the receipt, savings, installment savings or any other thing under any other name with the same economic nature as what is prescribed. They are obliged to run their business with their own fund as well as with money collected from a few and specified persons.

Due to the contemporary economic situations a lot of citizens and small entrepreneurs were eager to money. As above mentioned, banking were bound by many regulations. And Money Lending Business couldn’t meet demands because they were unable to raise funds from broad range, *i.e.* deposit. So an alternative was innovated. Companies limited by shares were

established to run Money Lending Business, and shares were offered publicly. Among those who made application, some could preferentially borrow money comparable to several times of face value, and could pay back by selling out. Others who didn't would get "preferential payments for shareholders". Established companies insisted that they didn't infringe relevant legislations because money was collected from persons specified, *i.e.* "shareholders". But on solicitation they emphasized the safety and the preferential condition in contrast to those of banks, and in effect they could collect money from a large number of the general public by offering shares publicly.

On March 3rd, 1953, chief officer of National Tax Agency issued Circular Notice (*tsutatu*). It said that money borrowed by or deposited to established companies from their shareholders shall be considered as Deposits for Consumption (*Shouhi Kitaku*) to those companies. And it also said that payments in consideration for that money shall be subject to tax as Interest Income in the hands of shareholders. At the end of the same year, a similar business enterprise broke up. After that, companies mentioned above also started to break up one after another.

2. 2　Judgment of March 23, 1962, Tokyo District Court[10]

Here those who had made application in lump sum payments received, as "preferential payments for shareholders", certain portion of their initial payments. According to written forms they acquired shares, but actually not. Company issued certificates as if banks did in the case of fixed term deposit, and booked the transactions as borrowing from shareholders. After investigation, it started to collect money as consideration for shares. On the other hand applying persons had to accept the condition that shares not issued immediately, and to delegate their voting power on general meeting.

Tax assessments, based on the Circular Notice above, insisted that "preferential payments for shareholders" here fall within Interest Income so company have had to withhold income tax on them. On the other hand, company contended that it only have had borrowed money and paid back with interests. Judgment upheld tax assessments as follows;

1) It may be rather questionable that "deposits", referred to in ACT, generally include all cases of Deposits for Consumption of money, but at least money banks or other financial institutions receive from numerous and unspecified persons under contracts of Deposits for Consumption. If persons other than financial institutions do the same, they infringe laws. But money they collected falls within "deposits" in ACT because it has the same nature as that banks collected. Regardless of what we call, money that depositary pay to depositor in relation to the amount deposited or to the duration deposited falls within "interest on deposits".

2) According to the facts found, company simply didn't intend to allot its shares to applying persons. Applying persons didn't pay any attention to the position of shareholders. The aim here was to avoid the prohibition of relevant legislations. Company paid interests at certain rate in the name of "preferential payments for shareholders". Real nature of contracts was Deposits for

Consumption of money.

3) It is true that under contracts of Loan for Consumption (*Shouhi Taishaku*) funds for business can be raised by collecting money with promise that it will be paid back later with interests at certain rate. But under Deposits for Consumption the same can be achieved. Indeed, company here had collected money by solicitation and appropriated that money for its business as if banks did. Both of them share the same nature. So we should understand those contracts as Deposits for Consumption rather than Loan for Consumption.

This is the starting point of Jurisprudences of Interest Income[11]. It started from inquiries into the meaning of "deposits" on ACT. And it mentioned Deposits for Consumption, which is one of the categories of contracts stipulated in Civil Code (*Minpou*), art. 666 even if it didn't specifically mention that Code[12].

Civil Code[13], art. 657 stipulates contract of Deposits (*Kitaku*), which become effective when one of the parties receives a certain Thing by promising that he or she will retain it for the other party. Here one party, *i.e.* depositaries, has to retain Thing itself received by the other party, *i.e.* depositors. On the other hand, art. 666 stipulates that of Deposits for Consumption under which a depositary may consume the Thing deposited. Here what depositaries have to retain is not Thing deposited itself, but value of. Depositaries can consume Thing deposited and prepare for the same Thing on returning.

Concerning for the latter, deposits to banks is thought to be typical transaction falling with. Of course, Civil Code doesn't limit the scope of depositaries here to banks. Instead, according to some other legislations on financial transactions, Banking, including acceptance of deposits, is subject to punishment if run without license. On application of these legislations, economic nature of relevant transactions is paid attention to. And by observing transactions conducted in the name of deposits, we can find so many varieties.

By the way, total scheme of Deposits for Consumption can be seen as similar to that of Loan for Consumption. Under art. 587, it becomes effective when one of the parties receives money or other things from the other party by promising that he or she will return by means of things that are the same in kind, quality and quantity. Indeed provisions of Civil Code on Loan for Consumption are applicable *mutatis mutandis* to Deposits for Consumption. But in case of latter, the depositor may demand the return at any time if the contract does not specify the timing of the return. According to general understanding, this difference originates from that of parties benefitted. In former, the borrowers are benefitted from money borrowed. In latter, especially in case of deposits, depositors are benefitted from because they are relieved of contingent risks on that money and can earn profits in the name of interests. But these are only limited aspects of both transactions[14]. For example, for Money Lending Business, lending money and paid back with interests lead to their own profits. And for banks, money collected in the name of deposits is appropriated for their funds for business.

This and other cases concerned have roots in this confusing nature between Deposits for Consumption and Loan for Consumption. Position of this judgment seems to understand the meaning of “deposits” on ACT in connection with contract of Deposits for Consumption. This can be assumed by judgment using the word, “depositor” or ”depositary”. In this point it shares the position with Circular Notice above. But it also paid attention to “nature” of money collected. According to this judgment, it is true that persons without license but conducted with Banking, including acceptance of deposits, are subject to punishment but money collected has the same nature as that collected in accordance with Deposits for Consumption. As stated above, Civil Code itself doesn't exclude persons other than banks or other financial institutions from parties of contracts, so even in this case, the nature of Deposits for Consumption might not be lost.

By the way it seems a little vague why this judgment concluded that “preferential payments” here fell within Interest Income. It said that the appearances of share transactions were fake to avoid punishment of relevant legislations. But why does this statement lead to decision? Perhaps in connection with share transactions, company here concluded contracts with limited number persons, *i.e.* shareholders. From standpoint of company, it didn't act like banks which concluded contracts with numerous and unspecified persons. This judgment seems to aiming to have made rebuttal to this contention.

2. 3　Judgment of December 25, 1962, Chiba District Court[15]

Here about 39 million yen was collected from about 40 customers by the following two ways;
i) Having collected, and paid back, with interest about 3 percent per one month, after a certain period, both of which had been agreed in advance. Such conditions were appeared on certificates having formulated in advance and handed out.
ii) Having collected, but customers could withdraw, wholly or partly, at any time with interest about 0.1 percent a day. “Passbook” was prepared in advance and handed out to record several transactions.

In both ways parties concluded the contracts of Loan for Consumption and didn't agree with securities. Tax assessments insisted that interests here fall within Interest Income. Judgment upheld them as follows;

1) Deposit is money that one parties like banks or other financial institutions collect, *i.e.* are deposited, from the other parties, *i.e.* numerous and unspecified depositors, by promising to pay back the same amount. That money has the nature of Deposits for Consumption on Civil Code, art. 666. The former don't have to retain the collected money itself. They can use it, consume it, and pay back by preparing for the same amount. “(D)eposits” on ACT cannot be understood as inherent meaning different from that on Civil Code. It is true that under Loan for Consumption one party, *i.e.* borrowers, can collect, *i.e.* can borrow, money from the other party, *i.e.* lenders, use it, consume it, and pay back by preparing for the same amount. Here collected money is used

and consumed for the benefit of borrowers, such as their daily life expenses or their funds for business activities. On the other hand depositors are not involved in cash transactions, are free from contingent risks such as thefts or fire accidents and commit themselves to savings or earning profits by letting depositaries retain their monetary value. The former pays less attention to how the latter make up yields by using the money deposited to. Both are distinctly different on economic nature, by which deposits prohibited by legislations shall be identified. In applying tax law, it is necessary to decide whether money collected falls within the deposited or the borrowed. Here we not only should look into legal form adopted by parties, but also into economic nature of money collected.

2) Company here collected money from customers by promising to pay back later the same amount. Company could use and consume that money. On this point, company can be seen to have borrowed money from customers. But considering the way of solicitation and of collecting, money cannot be seen as primary benefit for company raising funds, rather company can be understood to have retained monetary value for the benefit of customers. In particular, i) above can be seen as the way of collecting money for savings or earning profits of customers like fixed term deposit to banks or other financial institutions. And ii) for small amount savings like ordinary to. If not, customers had been afraid of being paid back and required guarantors or securities. After breaking up of similar enterprise at the end of 1953, it became difficult for company here to collect money as the way mentioned above perhaps because customers might have been afraid of. Company habitually have collected money in accordance with contract forms having prepared in advance. Customers here were not limited to specified ones. These imply that collecting money by company have the same economic nature as Deposits for Consumption of money rather than Loan for Consumption.

3) From the view point of fair tax burden, legal form adopted by parties should not be decisive factor if that is different from the one which should be considered to be adopted in contrast to economic nature of collecting money and if the former was adopted without justifiable reasons.

4) It was appropriate for parties to conclude contracts of Deposits for Consumption of money which complied with economic nature as if banks or other financial institutions did. But in fact parties concluded contracts of Loan for Consumption different from the one which should be considered to be adopted in contrast to economic nature. Company's aim was to avoid the prohibition of relevant legislations, which is not appropriate for justification.

Second judgment on the same issue can be seen as slightly diverge from first one on several points. It clearly stated that the concept of "deposits" on ACT "borrowed" from that of Civil Code and paid attention to the nature of Deposits for Consumption. But it also mentioned "economic nature" of money collected.

According to facts found, attribute of customers for company here is unclear, so he or she may be shareholder or not. Main attention was on the way of solicitation or of collecting money.

By the way, why did this judgment put emphasis on “economic nature”? The reasons stated can be divided into two; first is vague difference of Deposits for Consumption and Loan for Consumption. Second is the “distinct” difference of the benefitted, i.e. depositors on Deposits for Consumption and borrowers on Loan for Consumption.

Especially on the latter, as abovementioned, this difference is relative. So in this sense, “economic nature” might not be so “distinctly different” as this judgment thought of.

2. 4　Judgment of December 9, 1964, Tokyo High Court[16]

On appeal from second judgment immediately above, following two facts were additionally found;

a) On the way of i) customers can withdraw their money by assuming certain fees even before agreed period.

b) On certificates and “passbook” handed out to customers were specified that company had borrowed money. And Company booked the transactions as borrowing.

And judgment also upheld tax assessments by tracing, amending and adding some points to second judgment as follows;

1) “(D)eposits” on ACT should be understood as having the nature of Deposits for Consumption on Civil Code, art. 666. Under Loan for Consumption one party can also collect money from the other party, use it, consume it, and pay back by preparing for the same amount. Articles of Civil Code on Loan for Consumption can be applicable *mutatis mutandis* to Deposits for Consumption. On latter, however, if the contract does not specify the timing of the return, the depositor may demand the return at any time. Amongst deposits to banks or other financial institutions, there are current accounts or ordinary deposits, under which the timings of the returns are not specified and therefore the depositors may demand the return, *i.e.* withdraw money, at any time.

2) Considering the way of solicitation and of collecting, company can be understood to have retained monetary value for the benefit of customers. So the way of collecting can be seen as having the nature of Deposits for Consumption. In particular, ii) above has the attribute of Deposits for Consumption which doesn’t specify the timings of the returns.

3) In deciding the nature of contracts, decisive factor is substance thereof, rather than how parties call it. Company’s aim was to avoid the prohibition of relevant legislations, which cannot be rebuttal of nature as Deposits for Consumption.

Third judgment stood in the same position as its Lower Court, *i.e.* second judgment, in that it understood “deposits” on ACT as the same nature with that on Civil Code. But it mainly paid attention to it and didn’t mention “economic nature” as its Lower Court. Despite having skipped introduction above, in connection with nature of deposits, this judgment nearly cited the statements of its Lower Court.

In particular this judgment mentioned the timing of return on Deposits for Consumption, and on those who benefitted, reached the same conclusion with its Lower Court. On this the same thing may be true with its Lower Court.

There was no appeal to Supreme Court.

2. 5　Judgment of April 30, 1965, Tokyo District Court[17]

Main feature here was focus on share transactions. Company lent money to its board members and let them undertake shares issued. And applying persons acquired those shares through company. Previously the latter were not paid for, but booked as if it had made payments on behalf of the former. Later the former made payments in installments, and on contracts, the latter retained shares till the former paid out full amounts. On maturity, payments for shares were paid back from company, which was treated as if shares were sold through it and it made payments on behalf of. After breaking up of a similar business enterprise at the end of 1953, company here also did.

Company here had collected from its shareholders certain amounts ranging from 5,000 yen to 36,000 yen per one shareholder, for certain periods ranging from 100 days to 1 year. Later, company paid back certain amounts as interests. Parties didn't agree with securities. Tax assessments insisted that interests here fall within Interest Income. Judgment upheld them as follows;

1) "(D)eposits" on ACT is not specified in ACT itself or other legislations. So in deciding it, we have to look into economic phenomena generally understood as deposits and into the reason why ACT single out interest on deposits as an independent category, *i.e.* Interest Income. As for deposits, financial institutions or other persons wanting funds collect money from the numerous and unspecified in accordance with Agreements prepared by the former in advance as well as backed by credibility of the former. The former appropriated that money for their funds for business and the latter usually acquire certain rate interests. On the other hand, under ACT, interest on deposits is singled out as Interest Income and payers thereof have to withhold income tax on it because its payments are continuous and in a way of fixed term.

2) Articles of Civil Code on Loan for Consumption can be applicable *mutatis mutandis* to Deposits for Consumption except for the timing of the return, which is not mandatory and parties can diverge from. There is no clear distinction between them from legal point. There are several variations even amongst bank deposits. For example, fixed term deposit has common feature with Loan for Consumption, because during that fixed term banks can use collected money without some kind of allowance and interest rate here is generally high.

3) Bank deposits are not only for retention of monetary value of depositors, but for earning interest of depositors and for utilization of deposited money by banks, for which banks are competing each other.

4) According to relevant legislations, Banking consist of acceptance of deposits as well as the lending of funds, and persons without license but having run Banking are subject to punishment. Therefore concept of deposits precedes that of banks, both concepts are independent each other.
5) Our question here is whether interests paid by company to its shareholders are different from Interest Income on ACT or not by considering economically or substantially. Established companies aimed at avoiding the prohibition of relevant legislations, so there are several suspicious points by observed legally. It is also true to company here. For example company lent money to its board members and let them undertake shares issued, which will lead to lacking of capital. On contracts, company retained shares till applying persons paid out full amounts thereof, which will lead to creation of pledges over shares issued by company itself. On maturity, payments for shares were paid back from company, which was treated as if shares were sold through it and it made payments on behalf of, which will lead to acquisitions of shares issued by company itself because company did regardless of whether those who want to acquire shares exist or not. And previously company was not actually paid for, but booked as if it had made payments on behalf of applying persons. These imply that position of applying persons as shareholders were only aiming at avoiding the prohibition of relevant legislations.
6) Focusing on economic aspects, company collected money from the numerous and unspecified in accordance with Agreements prepared by the former in advance, promised high rate interests and appropriated that money for their funds for business. A series of transactions can be seen as not different from fixed term deposits to banks or other financial institutions because maturities were after relatively short periods, amounts of money collected per one shareholder were small and there were no agreements on securities. Company broke up perhaps because applying persons might have started to be afraid of. Therefore a series of transactions were substantially deposits on ACT, and interests paid by here fall within Interest Income.

Fourth judgment clearly put the emphasis on economical aspect, under which it analyzed how company collected money from shareholders. In particular it mentioned the timing of returns on Deposits for Consumption as not mandatory provisions.

By the way this judgment paid attention to share transactions. According to facts found, applying persons here actually may have acquired shares of company here, so judgment seems to have had to attack the position of applying persons as shareholders. In contrast, on first judgment, applying persons actually didn't acquire shares.

At the bottom, these transactions aimed at avoiding the prohibition of relevant legislations. According to this judgment, both parties couldn't avoid legislative governance.

2. 6　Judgment of April 28, 1966, Tokyo High Court[18]

On appeal from Tokyo District Court 1962, *i.e.* first judgment, as additionally found fact, there were no agreements on securities. And judgment also upheld tax assessments as follows;

1) Generally, deposits are understood as money collected by corporations in accordance with contracts of Deposits for Consumption. In principle, Civil Code treats that and Loan for Consumption as the same, but as for the former, the depositor may demand the return at any time if the contract does not specify the timing of the return. According to general understanding, this reflects functional difference, *i.e.* the former is mainly benefitted to depositors. But this difference is relative one, and Agreements, which had been detailed along with development of modern banking, have been governing real transactions, so deviation from Civil Code is now remarkable. Therefore it is important to grab economic substance of deposits and the reason why ACT addresses Interest Income as current way.
2) According to the facts found, company simply didn't intend to allot its shares to applying persons. Applying persons didn't pay any attention to the position of shareholders; rather they solely were eager to earning profit. Company mainly appropriated money collected for funds of money lending business in relation to other shareholders. There were no agreements on securities, and paying back was only backed by credibility of company. All of these imply that money collected were substantially deposits mentioned above.
3) It is true that company treated money collected as consideration for shares or as borrowing from shareholders, and paying back for lump sum initial payments as preferential payments for shareholders. But the aim here was to avoid the prohibition of relevant legislations.
4) According to relevant legislations, concept of deposits precedes that of banks, both concepts are independent each other. And deposits on ACT should not be interpreted as limited to that in relation to banks.

Fifth judgment can be seen as within strong influence of fourth judgment immediately above. As a result, it concurred its Lower Court, *i.e.* first judgment, and put emphasis on economic "substance". In connection with this and relevant ACT provisions, despite having skipped introduction above, this judgment nearly cited the statements of fourth judgment on "economic nature" of deposits and on tax treatment of Interest Income on ACT.

There was no appeal to Supreme Court. After this Judgment, judgment of 1965 above was appealed to higher court, but rejected by totally citing that judgment[19], *i.e.* sixth judgment. There was no appeal to Supreme Court.

2. 7　A Loose End

After viewing judgments so far, following two points can be commented;
1) In relation to the issue of Interest Income, two positions are in line with; nature of contract or economic nature of transactions. But even on the former position, nature or economic nature of collecting money were by and large observed. And feature of deposits is commonly shared with each position; One party, *i.e.* financial institution or those who want funds, collect money from

the other, *i.e.* the numerous and unspecified, in accordance with Agreements prepared by the former in advance as well as backed by credibility of the former. The former don't have to retain the collected money itself, can appropriate it for its own funds for business and pay back by preparing for the same amount.

2) As abovementioned, contemporary relevant provisions on ACT and attached other rules lacked the requirements of banks or other financial institutions. But even under current provisions, judgments might not be influenced. Established companies here were indeed established to run Money Lending Business and they accomplished necessary procedures which was lighter than those of Banking. So they might be said to be "other financial institutions" on ACT nowadays[20].

3　Cases on Bank Transactions

3. 1　Common Facts

Here, Bank, as plaintiff, concluded contracts with companies limited by shares resident in Japan. In accordance with those contracts, Bank collects money from companies, and makes up yields against it. After a while, on the dates of payments, the former performs monetary debts on behalf of the latter.

Amounts of money collected, hereinafter mentioned as A, were calculated based on those of monetary debts, hereinafter mentioned as B. In calculation, B were divided by certain discount rates and figured out the present values when banks collected money, *i.e.* A.

Tax assessment insisted that differences between A and B fall within Interest Income so bank have had to withhold income tax on them. On the other hand, Bank contended that it only have been mandated by companies to perform their monetary debts on behalf of.

3. 2　Judgment of July 1, 2005, Tokyo District Court[21]

Judgment upheld tax assessments as follows;

1) The meaning of deposits should be considered based on general term meaning. Viewed legally, they have the nature of Deposits for Consumption. But contracts in fact compose of several elements. So if one contract contains elements of Deposits for Consumption, under which money was collected by banks or other financial institutions, *i.e.* depositaries, it is in principle appropriate to think as deposits.

2) According to contracts here, Bank can be seen as under obligations that, instead of paying back B, it performs monetary debts of companies on the dates of payments against B, which is summed up by interests to A collected from companies. Therefore those contracts can be seen as having nature of Mandates, under that Bank performs monetary debts of companies on the dates of payments against B. Additionally this Mandates roots from Deposits for Consumption of money, under that Bank is deposited A and pays back B against A on the dates of payments.

3) On the other hand, viewed economically, banks collect money from depositors and make up yields during fixed periods, mainly by lending. In turn depositors are usually paid back certain amounts of payments, *i.e.* interests, which mean consideration for making up yields.
4) According to contracts here, Bank makes up yields against A, in turn, companies were performed of monetary debts against B exceeding A. Differences between A and B should be seen as being paid back from Bank of interests derived from deposited for a while. It is true that companies weren't directly paid back interest from Bank, but they had deposited A, were paid of B on behalf of and released from monetary debts equal to B. Therefore they, as depositors, can be seen as indirectly having acquired the difference between A and B which is comparable to interests.
5) So A falls within general term meaning of deposits, which leads to fall within "deposits and savings" on ACT. And the difference between A and B, which can be seen as having been paid by Bank to companies, *i.e.* depositors, in consideration for making up yields against A deposited to, falls interests on deposits, therefore leads to fall within "interest on deposits and savings" on ACT.

Seventh judgment on Interest Income can be divided into two parts; first part is legal one and second part economical one.

On legal part, despite having skipped introduction above, this judgment cited several statements of second and third judgments on feature of deposits. But it admitted that one contract compose of two or more ones, and that collecting money fall within deposits if in accordance with contracts which consist of Deposits for Consumption and any other. It found that contracts here consist of Mandates and Deposits for Consumption.

On economical part, making up yields was paid attention to. And interest was viewed as consideration for thereof. According to general understanding, interest is cost of using money[22], so this recognition may be appropriate[23].

By the way, which part was more decisive? On legal part, whether or not fall within "deposits" on ACT was considered. On economical part, emphasis was on making up yields and therefore concept of interests was also considered as consideration for. These two parts operate to decide the meaning of "deposits" and the relationship of that and interests.

Appeal to higher court, *i.e.* eighth judgment, was rejected by totally citing this judgment[24].

3. 3　Judgment of January 24, 2006, Tokyo District Court[25]

Here additionally in particular following facts were paid attention to; written forms of explanations or contracts included the wording of "deposit". Bank booked a series of transactions using account name of "fixed term deposits." Companies here made application for licenses to Minister of Finance at that time, which were concerned acquisition of claims.

Judgment upheld tax assessments as follows;

1) “(D)eposits” on ACT isn’t specifically defined by legislations, so general term meaning should be inquired into in light of feature of banking or general understanding. Banks, as one of the financial intermediaries, collect money backed by their credibility from broad range of people as deposits, make up yield against that money, especially by lending, and usually pay back interests to depositors in consideration for making up above. In fact there are a variety of financial instruments in accordance with demands of depositors and with function of banks. Therefore, from legal point of view, contracts originating deposits are those with the nature of Deposits for Consumption of money. And interest on deposits originates from agreements included in Deposits for Consumption of money, especially in relation to interests. Here interests are mainly money in consideration for use of principals deposited and represent certain rates thereof.
2) In deciding nature of contracts here, what parties intended to should be reasonably interpreted in light of relevant documents, object or function of contracts and so on. According to the facts found, companies here were paid of B exceeding A by having had deposited A to Bank, were released from their debts and were benefitted economically by the difference between A and B. In other words it was guaranteed as of having concluded contracts that companies could be benefitted economically by amounts exceeding those deposited. On the other hand Bank was to make up yields against A in order to pay B exceeding A. The difference between A and B is consideration for making up yields against A, which can be seen as being able to calculate also in relation to A by dividing with certain rates. Bank can be seen either as having paid back money deposited or, without consents, as having offset the right to obtain reimbursement originating from paying back against the right to claim to pay back.
3) Therefore contracts here can be seen as having nature of following two; first is of deposits, under which A is deposited till the date of payments and A summed up by interests in connection with periods money have been retained, *i.e.* as B is paid back. Second is of Mandates, under which deposited A summed up by interests thereof, *i.e.* as B is paid to on behalf of companies.

And the difference between A and B falls within interests on deposits, *i.e.* A which were deposited by companies to Bank in accordance with Deposits for Consumption.

Ninth judgment seems to be back to first or third , in a sense second, one. In this judgment all of features of deposits, including making up yields, were understood in relation to contract of Deposits for Consumption. In particular, interests were understood in relation to Agreements of contract.

By the way how this judgment decided nature of contracts were so called interpretation of wills of parties. Written form or documents here were paid attention to. In contrast second and third judgment, appearance of share transactions was totally denied.

Appeal to higher court, *i.e.* tenth judgment, was rejected by totally citing this judgment[26].

3. 4　A Loose End

Appeals to Supreme court of both judgments were dismissed[27]. After viewing judgments so far, following two points can be commented;

1) In relation to judgments on bank transactions, relationship between deposited money and interests were analyzed. On either judgment, A and the difference A and B were connected with each other. In contrast, judgments on Money Lending Business solely put emphasis on the meaning of "deposits" on ACT[28].

2) On feature of depositors, *i.e.* the numerous and unspecified, judgments on bank transactions indicate so attractive feature. In seventh judgment, Bank concluded contracts with 17 companies. According to this judgment, deposits have so many varieties that the short and specified can be depositors. In ninth judgment Bank concluded contracts with 3 companies. According to this judgment, contracts here can be concluded by the numerous and unspecified in the future. On latter, according to facts found, written forms of explanations or contracts were prepared by Bank. So Bank might expect other companies as new customers[29].

4　Final Remarks

So far we overviewed and analyzed judgments of Japanese Lower Courts on Interest Income in chronological order and reached the conclusion that we can find out some common features of deposits even if positons adopted are different each other.

Main emphasis was on precise introduction of statements of judgment. Next stage is deepen this knowledge by inquiring into scholars' view. [*End of Texts*]

Endnotes

1 Hereinafter referred to as "ACT". As for provisions on ACT relevant here, *see* DHC COMMENTARY: INCOME TAX ACT (DAI ICHI HOKI) 1411-58 (Revised at Feb. 25, 2016)[hereinafter cited as DHC]. In principle titles and legal terms of Japanese laws follow the indication of http://www.japaneselawtranslation.go.jp/?re=02.

2 ACT, art.23 (1).

3 ACT, art. 2 (x); Order for Enforcement of the Income Tax Act, art. 2.

4 ACT, art.181 (1); ACT, art. 174 (i) and 212 (3).

5 Act on Special Measures Concerning Taxation, art.3 (1).

6 ACT, art.23 (2).

7 K. SAKAI, SYOTOKU ZEIHOU NO RONTEN KENKYU: SAIBANREI/ GAKUSETU/ JITSUMU NO SOUGOU TEKI KENTOU (AN INQUIRY INTO MAIN ISSUES OF INCOME TAX ACT: COMPREHENSIVE ANALYSES OF JURISPRUDENCES, SHOLOAR'S VIEW AND PRACTICE) 79 (2011).

8 As for these background, *see* 41 HANREI TIMES 77 (1954).

9 Act Regulating Money Lending Business (No. 170 of May 1949), *repealed by* Money Lending Business Act (No. 32 of March 1983); Act Regulating the Receipt of Contributions, the Receipt of Deposits, and Interest Rates (No. 195 of Jun. 1954); Banking Act (No. 21 of 1927), *amended by* Banking Act (No. 59 of Jun.

1981).

10 LEX/DB: 21015940.

11 On Corporation Tax of established companies, it was issued of whether or not "preferential payments for shareholders" fall within expense of companies having paid out. One case stipulated as follow; shares here are substantially tools of collecting deposits and contributions. "Preferential payments for shareholders" in consideration for is substantially money similar to interests on deposits in consideration for making use of funds. Judgment of Oct. 21, 1965, Tokyo High Court, Gyosei Jiken Saiban Reisyu vol. 16, no.10, p.1650.

12 Classification of judgments adopted here is slightly different from that of Sato, *Rishi Shotoku ni okeru* "*Yokin Rishi*" *no Igi to Hani ni kannsuru Oboegaki* (The Concepts of "Deposit" and "Interest" in the Individual Income Tax Law in Japan), KOBE L. J. vol. 41 num. 1 at 61 (1991).

13 As for the explanation of relevant provisions on Civil Code, *see* 16 TYUSHAKU MINPOU (COMMENTARY ON CIVIL CODE) 383-434 (T. Ikuyo and T. Hironaka newly ed. 1989).

14 *See Id*. at 395.

15 Gyosei Jiken Saiban Reisyu vol. 13, no.12, p.2277. As for case comment, Nakagawa, 15 STEUER 12, 15 (1963).

16 Gyosei Jiken Saiban Reisyu vol. 15, no.12, p.2307. As for case comment except for mentioned later, Sugai, 50 STEUER 1 (1966); Kitano,17 JURIST 66 (1968); Matsubara, 207 JURIST 64 (2011).

17 TAINS: Z041-1389.

18 Tokyo High Court Minji Hanketsu Jiho vol.17, no.4, p.74.

19 Judgment of May. 17, 1966, Tokyo High Court, TAINS: Z044-1501.

20 *See* Sato, *supra* note 12 at 86. Relevant Circular Notice concern the requirement of bank and other financial institutions. According to it, they should be permitted to do their business in accordance with Japanese Act. As for critique of this, *see id*. at 81.

21 TAINS: Z255-10069.

22 BARRON'S DICTIONARY OF FINANCE AND INVESTMENT TERMS 364 (J. Downes and J. E. Goodman 9th ed. 2014).

23 Of course, in relation to current account, there is no interest.

24 Judgment of Dec. 21, 2005, Tokyo High Court, TAINS: Z255-10251.

25 TAINS: Z256-10274. As for case comment, *see* Nagato, 228 JURIST 68 (2016).

26 Judgment of Aug. 17, 2006, Tokyo High Court, TAINS: Z256-10489.

27 Decision of Aug. 23, 2007, Supreme Court, TAINS: Z257-10765; Decision of Aug. 23, 2007, Supreme Court, TAINS: Z257-10766.

28 In this point, *see also* Masuda, *Case Comment on third judgment*, 178 JURIST 58, 58 (2005).

29 In relation to repurchase transactions of debts, there are Master Agreements in accordance with which transactions will be achieved. *See* Judgment of Mar. 12, 2008, Tokyo High Court, available at Website of Japanese Court: http://www.courts.go.jp/.