

Qualification as Interest Income on Japanese Income Taxation:

An introductory inquiry into Income Taxation on “Foreign” Interest

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Abstract

Japanese taxation on Interest Income heavily relies on withholding system in the hands of payer. This operates only when that payment is done within Japan. Along with globalization people are heading for financial institutions which exist outside Japan. Here withholding will not work both for the current provision of Japanese Tax Act and for the principle of taxing jurisdiction. Instead self assessment is needed here. Main problem is how to characterize certain payments in connection with such foreign institutions.

As one area of international taxation we will struggle with this issue. In other words the question is how to interpret Japanese Income Tax Act in connection with “foreign” situation, especially “interest on deposits and savings” and “banks and other financial institutions”, both of which really locate in Japanese Income Tax Act and relevant order for enforcement. By an introductory inquiry below legal approach cannot solve problem because of complexity of current financial transaction. Conversely certain mixture of legal and economical is appropriate.

First step is to interpret Japanese Tax Law within Japanese legal system. Second is to understand relevant contracts in accordance with conflict of law. On economic one there should be some limitation in connection with Interest Income. That may be whether or not solicitation was in public, relevant transactions continued recurrently and whole pictures were drawn in accordance with formalized covenants. Concrete degree of each element should be considered by next jurisprudences.

Keywords: Interest Income, Income Taxation, financial transaction, conflict of law, international taxation

1 Introduction

In Japan many people hold their household as deposit or saving on banks or other financial institutions. Of course these have been mainly domestic investigation within Japan. But recently facing severe low rate and amid the wave of globalization, some people started to turned their attention to financial institutions outside Japan.

From the perspective of taxation, Interest Income mainly concerned with individuals are subject to long standing withholding mechanisms, but that doesn't operate well in the above mentioned situation. In particular classification of certain income may be accompanied by some difficulty when "foreign" elements concerns.

From now on we start to introductory analyses on relevant legislation of Interest Income in the context of international situations².

2 Basic Knowledge

2.1 Overview of Income Taxation

Under Japanese Income Tax Act³ individuals are subject to Income Tax (*Shotoku-zei*) on their income⁴. Under Japanese Income Tax "income" has comprehensive nature, *i.e.*, whether or not temporal or recurrent, cash or in kind, legal or illegal, and so on⁵. In particular individuals resident in Japan (*Kyojyu-sha*)⁶ are liable to Income Tax on their world wide income⁷, which means there is no territorial limitation on sources of income.

At the initial process of calculating amount of income tax, Japanese Income Tax adopts some elements of scheduler system⁸. Income is divided into ten items⁹ in consideration of ability to pay¹⁰. Each item is separately calculated in accordance with different rules. But ultimately, each calculated item is bunched up¹¹ and subject to progressive tax rate¹².

2.2 Income Taxation on Interest Income

Interest Income (*rishi shotoku*) is one of the above-mentioned ten items. That is mainly composed of 1) interest on public bonds and corporate bonds, 2) interest on deposits and savings, as well as 3) distribution of proceeds from some trust¹³. Central part here is "interest on deposits and savings (*yochokin no rishi*)"¹⁴, which mainly head for "banks and other financial institutions"¹⁵. It follows that Interest Income is narrower than interest generally conceived of¹⁶.

In computing Interest Income, there is no room for deduction of expenses or allowances¹⁷. So gross receipts itself consists of the amount of Interest Income. Under Income Tax Act Interest Income is also aggregated with other item of income and individuals resident in Japan, as taxpayer, has to file a return on tax payable in connection with Interest Income¹⁸.

However there is one important exception on Interest Income paid to individuals resident in Japan¹⁹; those who pay it have to withhold Income Tax, 15 percent on the amount of Interest Income²⁰, if that payment is done within Japan (*kokunai*)²¹. Furthermore under special measure such Interest Income paid within Japan, hereinafter referred to as *Domestic Interest*, is separated with other item of income on taxation²².

This treatment of *Domestic Interest* roots in a series of tax reformation in 1980s²³. On the process of this reformation Interest Income was viewed as "derived frequently" and "various in the light of origin". And tax treatment was thought of as ideal which is less burdensome in

collection and payment.

It follows that Interest Income other than *Domestic Interest* is not subject to such taxation measures. As will be mentioned later, this is true to interest on deposits in connection with foreign financial institutions. And some corporations are subject to Income Taxation on Interest Income paid within Japan²⁴.

3 Jurisprudences

3.1 Cases in 1960s

3.1.1 Background

Jurisprudences concerned go back to 1960s²⁵. Immediately after the World War II Japanese national systems were completely broken up. Due to contemporary economic situations there were those who only concern their own profit. They caused severe damage to consumers.

In the process of reconstruction Japan started to control such chaos. Some legislation, which governed business of lending money, is relevant here²⁶. In short as a means of raising funds deposits or savings were prohibited unless permitted by governmental authorities. It was implied that they should be backed by credit originated from administration by governmental bodies on several aspects, *e.g.*, on capital, on financial standing.

In detail decisive element here was “economic nature” rather than the name itself such as “deposits” or “savings”. Bulk money was collected from a large number of the general public without securities. After fixed term money collected would be returned to with certain consideration, *i.e.* interest. Before those enactments some ran away immediately after having collected money without running business. Others really had started, but soon went bankrupt because of bad debt. In any way they ultimately affected broad range of people due to the initial step of raising funds. But now they would be punished. Some were permitted and could legally collect money as deposits or savings. Others hadn’t been and were forced to lean mainly on their own funds.

3.1.2 Alternative

On the other hand, an alternative was innovated. Companies limited by shares were established, and shares were offered publicly. Application was made through payment in a lump-sum or payments in installment. In accordance with agreements with established companies some could preferentially borrow money comparable to several times of face value of shares, and could pay back by selling out their shares. Others who didn’t would get “preferential payments”.

Established companies could raise funds in connection with issuing shares. They would insist that the way adopted fall outside those prohibited by relevant legislations because money was collected from persons specified, *i.e.* “shareholders”. But in effect they could collect money from a large number of the general public since shares here had been offered publicly.

And from the view point of those who made application above they paid little attention to shares themselves. Some were eager to borrow money easily and could do it only by making payments in the name of consideration for shares issued. Whole processes relevant to shares, including selling out, were done by established companies. Others mainly concerned earning profits on preferential conditions. On the face of contracts they would make payments in consideration for shares issued, but in fact they ultimately didn't acquire them and stand in position of shareholders.

3.1.3 Issue

Main issue was classification on Income Taxation of following two payments;

1) "Preferential payments" in the hands of applicants. On solicitation, company put emphasis on similar nature with fixed deposits at banks. Application was made by payment in a lump-sum. Relevant documents adopted were similar to those of ordinal fixed deposits.

2) "Interest" in the hands of shareholders or others. Company here, as well as others, had raised fund by payments in consideration for shares issued. But it lacked fund and started wide range of advertisements in public by emphasizing the aspects of safe and beneficial investments. As a result it could collect substantial amount of money from its shareholders or other customers. In some cases it had to pay back with interests after relatively short terms. Even before such terms, collected money could be paid back on demand, but the amounts corresponding to fees were withheld. And in others company had to pay back whole or part of money collected with interests at any time on demand. In both cases documents were adopted similar to *e.g.* deposit certificates or passbooks, and parties concerned didn't pay attention to securities. But on the face of contracts company only borrowed money.

In detail it was argued whether or not these payments fell within Interest Income, *i.e.* "interest on deposits". In this era in connection with Interest Income there were no requirements of "banks and other financial institutions"²⁷. Of course established companies were not such institutions, but issue here rose.

The district director of the relevant tax office, as defendants, insisted that these payments be classified as Interest Income. In particular chief officer of National Tax Agency issued *tsutatu* (Circular Notice)²⁸ March 3rd, 1953. It related situation where established companies "borrow money" or "have money on deposit" from their shareholders and subsequently make payments in consideration for it. It said that those payments were classified as Interest Income in the hands of shareholders. Established companies, as plaintiffs, objected that in connection with those who had made application they only borrowed money or acquired consideration for shares issued.

If the district director was collect, established companies had had to withhold Income Tax on payments.

3. 1. 4 Judgments

Approaches adopted by judges were divided into following two²⁹;

Firstly according to judge on 1)³⁰ “deposits” concerns the situation where banks collected money from a large number of the general public in accordance with contracts of *Shouhi Kitaku* (Deposits for Consumption) stipulated by Civil Code³¹, art. 666. Achieved by established companies, it consists of crime. But collected money here has similar nature with those stipulated above, so it also falls within “deposits”. Parties concerned concluded contracts of making payments in consideration for shares issued, but they only pretended to. They wanted to avoid punishments regulated by relevant legislations. In reality plaintiff solicited in public those who wanted to earn profits. The former collected money from the latter to raise fund and afterwards the former paid back to the latter of “preferential payments” including interests. Nature here is the same as “deposits”.

Judge on 2)³² belong to the same category. According to it deposits concerns the situation above, *i.e.* collecting money from a large number of the general public by banks and other financial institutions. Afterwards they have to pay back, but they don't have to retain money collected itself. They can consume it. And in paying back, they have to prepare for the same amount of money as they had collected. So deposits fall within *Shouhi Kitaku* stipulated by Civil Code above. And “deposits” in ACT also can be interpreted in the same way. Here the main aim is to retain monetary value for the benefits of depositors. So if parties concerned didn't refer to the timing of the return in advance, the depositor may demand the return at any time. This is the crucial point of difference between deposits and mere borrowing money even if the provisions of Civil Code on borrowing money are applicable *mutatis mutandis*. The way of collecting money here was appropriate to savings, earning profits or those of petty and easy for customers. In the light of this recognition the aim was to retain monetary value collected from customers. Furthermore in general borrowing money is accompanied by securities, but parties concerned didn't pay attention to at all. So the whole pictures should be viewed as not borrowing but as *Shouhi Kitaku*. It was true that face of contracts had stipulated the former. But when we characterize contracts, we have to see substance rather than form. It could be understood that company only had pretended to because it wanted to avoid punishments above.

Additionally judge on 2) of lower court³³ is classified with the same category. As well as judge of higher court it mentioned deposits in relation to *Shouhi Kitaku*. And it regarded “deposits” in ACT as having the same meaning as that above because ACT seemingly doesn't adopt original meaning different from. On the other hand judge here made a step to consider the difference of “economic nature”³⁴ between borrowing money and deposits. According to it the former mainly benefits the borrowers. Borrowed money is used to economic activities or consumed as living expenditures of borrowers. Conversely the latter mainly benefits depositors. They are relieved of burden of paying in or out by themselves, avoid contingent risks such as thefts or fire accidents

and plan on savings or earning profits. They pay less attention to how deposited money will be invested to make up yields. And it was implied that the way of collecting money here mainly aimed at benefitting to shareholders or other customers, not company, which had planned to raise fund with money collected. If not, parties concerned would have had paid attention to securities. After the bankruptcy of enterprise having conducted in similar business with company, plaintiff, it became difficult for the latter to raise fund by that way above. This may be why it lost credits from shareholders or others. So the whole pictures should be viewed as not borrowing money but as *Shouhi Kitaku* in economic nature. By the way in applying tax law we must not be confused by legal form parties concerned have selected. In addition we must watch on economic nature. In particular it is true from the view point of fair tax burden when the former is considerably different from ordinal legal form in the light of the latter and such difference cannot be justified. It was true that face of contracts here had stipulated borrowing. But in considering ordinal legal form in the light of economic nature above, it is clear that it should be *Shouhi Kitaku* rather than borrowing. In connection with this company might have had pretended to because it wanted to avoid punishments above. This could not be viewed as justification above.

Secondly according to judge on 2) of higher court³⁵ the difference of legal concept between *Shouhi Kitaku* and borrowing money above is nominal now. As for banks, collecting money as deposits is main means of raising funds, so it doesn't benefit only depositors. Furthermore contracts are governed by covenants in detail, which has been formalized along with developments of modern banking. So it is important to grasp economic substance of deposits. Corporations collect money from a large number of the general public. Collected money represents main parts of funds of the former. On credits of the former the latter wishes to make their money maintained in the former safely. Ultimately the former will pay back with certain amount of interest. Whole transactions are governed by covenants formalized by the former themselves. Subsequently it is necessary to understand why ACT provides for independent income category of proceeds from deposits and why ACT provides for special collecting measures, *i.e.* withholding in the hands of payers. ACT looks on the feature of this category, *i.e.* interest on deposits, which is formally, continuously and collectively paid to a large number of the general public. Furthermore according to some provisions of relevant Act it is understood that the concept of deposits precedes that of banks and both are conceptually independent each other. Therefore "deposits" in ACT is not limited to those in relation to financial institutions. In addition to nominal nature of shareholdings and positions of shareholders here, money collected was appropriated for raising fund and party concerned paid little attention to securities. These imply that money collected fell deposits substantially.

By the way on similar issue judges made decisions which can be categorized as the same above³⁶. It argued that in addition to the aim of ACT we also had to look on economic phenomena concerning deposits if we interpret the term "deposits" in ACT. It is true that the provision of

Civil Code on *Shouhi Kitaku* provides that the depositor may demand the return at any time if parties concerned didn't refer to the timing of the return in advance. But this provision can be overridden by each contract. There are various sorts of deposits in connection with banks. For example under fixed deposits banks can freely invest money collected without preparation for paying back during fixed terms. In turn banks have to pay back with high interest, so that seems to be similar to borrowing money. On deposits in connection with banks depositors are benefitted from interest paid back in addition to monetary value. And banks are also benefitted from, so banks struggle with acquiring depositors. The term “deposits” in ACT can be understood as not limited to those in relation to financial institutions according to the provisions of special taxation measures.

3. 1. 5 Some Remarks

So far we looked through a series of judges in 1960s. First category is mainly from legal perspective. At the bottom judges tried to understand the meaning of “deposits” in ACT in connection with *Shouhi Kitaku* on Civil Code. But even here judges were not bound by purely legal approach. By and large they tried to look on real nature of transactions achieved by parties concerned in the name of substance over form or economic nature.

This reflects some aspects surrounding *Shouhi Kitaku*. Civil Code, art. 657 concerned *Kitaku* (Deposits), which becomes effective when one of the parties receives a certain thing by promising that he will retain it for the other party. He is liable to return those things themselves³⁷. On the other hand Civil Code, art. 666 concerned the situation where he may, under the contract, consume those things. In connection with this situation named as *Shouhi Kitaku* the provisions of Civil Code is applicable *mutatis mutandis* which concerns borrowing money and returning it. And if the meaning of “deposits” in ACT is interpreted as the same way as judgments above, “deposits” here falls within Deposits for Consumption³⁸. On the other hand especially in connection with “deposits” individual agreements are detailed and as a result divergences with relevant Civil Code is widening³⁹. Here Civil Code itself cannot solve the problem.

In addition a series of transactions concerned the criminal sanction by relevant legislations, which provided for in connection with economic nature. Parties concerned planned to avoid such sanctions and their transactions inevitably became complexity one. And in connection with tax cases equity in the field of taxation should be considered.

Second category reflected such situations. Here at the bottom “deposits” in ACT is interpreted in accordance with economic nature rather than legal perspective. The important element here what should be viewed and how should be. If such a limitation could not be viewed precisely, wide range of income, especially originated from passive activities, would be included in Interest Income. Looking through a series of judges some limiting elements can be identifies. For example solicitation was in public. Relevant transactions continued recurrently. Whole pictures were drawn in accordance with formalized covenants developed in advance. Concrete degree of

each element should be considered by next jurisprudences⁴⁰.

By the way scholar's view can be divided into two⁴¹.

3.2 Recent Cases

Cases here concern Income Tax on Corporations rather than on individuals. Plaintiffs ran banking and they concluded contracts with some corporations. Those corporations had already issued corporate bonds. In accordance with contracts plaintiffs would make redemption of those bonds. In turn those amounts of redemption were divided by certain discount rate and calculated the present value. In accordance with contracts plaintiffs would collect money comparable to that present value. The district director of the relevant tax office insisted that difference between amounts of redemption and amounts of collected money fall within "interest on deposits" and plaintiffs have had to withhold Income Tax on them.

Some judgments mainly viewed the "interest on deposits" from legally, *i.e.* that fits in Deposits for Consumption⁴². Others additionally adopted economical view, *i.e.* investing collected money, acquired profits and pay back certain amount as interest⁴³.

4 "Foreign" interest

4.1 Premise

Now is the time to watch out Interest Income other than *Domestic Interest*. Here we turn to Interest Income paid "outside" Japan. For example some payments in the name of "interest" will be paid by financial institutions located outside Japan⁴⁴.

First of all in this situation beneficiary of such payments has to file a return on them. At the bottom payers of them exits outside Japanese tax jurisdiction, so Japan cannot exercise its sovereignty over those payers⁴⁵.

Next step is classification of Income. If such payments fall within Interest Income, deduction of expenses and allowances is not permitted. If not and fall within other category of income, such as Miscellaneous Income, such deduction is authorized⁴⁶. Under scheduler system, classification of Income directly affects the tax base.

4.2 Approach

First step is to interpret the wording of relevant national legislation, *i.e.* "interest on deposits" and "bank and other financial institutions". This interpretation should be done totally from Japanese standards⁴⁷. In particular if legal approach is adopted, "deposit" here should be interpreted in the light of Civil Code.

Next step is application to real facts. Contracts or agreements concerned should be understood in accordance with conflict of law⁴⁸. And those results should be considered in the light of ACT. But as well as entirely internal situation we will face the wall if pure legal approach is adopted.

Can transactions with foreign institutions be viewed as *Shouhi Kitaku* in connection with Japanese Civil Code? If the answer is yes, can we see the transactions falling outside the scope of *Shouhi Kitaku* as truly falling outside?

Here also the approach partly from the view point of substance or economic nature. Key element here is publicity of solicitation, formality of covenants and recurrence of transactions. Concrete degrees should be filled up with relevant judgments.

5 Final Comment

So far we tried to introductory analyses on Income Taxation of Interest Income on cross-border situation⁴⁹. We've found that possibility of break-through might lie in approach driven partly by economic nature and relevant some factors are introduced.

Especially on passive income, classification of income is one of the prominent problems. Especially in connection with interest difference with dividend is often considered. This point should be considered in international tax context. [*End of Texts*]

【Endnotes, including information of publications cited.】

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This is the outcome of research activities supported by a grant-in-aid from Zengin Foundation for Studies on Economics and Finance (2016-17).
- ² This consists of a series of research outcomes on classification of “foreign” element in applying Japanese Tax Law. *E.g.* Suzuki, *One Japanese case on taxation surrounding foreign trust*, 6 J. OF GRADUATE INSTITUTE FOR ENTREPRENEURIAL STUDIES 111 (2015).
- ³ No. 33 of March 1965, hereinafter referred to as “ACT”.
- ⁴ As the English explanations of Japanese tax system, *e.g.* M. OTSUKA, I. OTSUKA AND E. NAKATANI, *TAX LAW IN JAPAN* 72 (2nd ed. 2006).
Corporations are subject to Corporation Tax on their income in accordance with Corporation Tax Act. As for the latest English translation of this Act, *see* 2016 CORPORATION TAX ACT OF JAPAN: INCLUDING CHAPTER III OF SPECIAL TAXATION MEASURES ACT as of April 1, 2016 (Y. Gomi and T. Honjou ed. 2016), available at http://www.sozeishiryokan.or.jp/corporation_tax/corporation_tax2016e.html. On one of the exceptions, *see* later.
And unless otherwise specified, titles and legal terms of Japanese laws follow the indication of <http://www.japaneselawtranslation.go.jp/?re=02>.
- ⁵ H. KANEKO, *SOZEI HOU (TAX LAW)* 184-85 (21st ed. 2016).
- ⁶ According to ACT, art.2 (1) (iii), those who have a domicile (*Jusyo*) in Japan or have had a residence (*Kyosyo*) in Japan continuously for one year or more.
- ⁷ ACT, art.5 (1) and (2) (i) as well as art. 7 (1) (i).
- ⁸ KANEKO, *supra* note 5, at 188-89.
- ⁹ ACT, arts. 23-35. ACT, art. 35 provides Miscellaneous Income (*zatsu shotoku*) which doesn't fall within any other nine item. The existence of this item implies comprehensive nature of Japanese Income Tax. *See* H.

- KANEKO, *Sozeihou ni okeru Shotoku Gaineto no Kousei* (Concept of income in Tax Law), in SHOTOKU GAINEN NO KENKYU (INQUIRY INTO CONCEPT OF INCOME) 48-49 (1995).
- By the way Corporation Tax doesn't adopt such a scheduler system.
- ¹⁰ KANEKO, *supra* note 5, at 189. In general income from labor is thought of subject to light taxation, conversely, income from capital to heavy taxation. *Id.* at 204.
- ¹¹ ACT, art. 21(1).
- ¹² ACT, art. 89.
- ¹³ ACT, art.23 (1).
- ¹⁴ KANEKO, *supra* note 5, at 205.
- ¹⁵ ACT, art. 2 (x); Order for Enforcement of the Income Tax Act (No. 96 of March 31, 1965), art. 2.
- ¹⁶ Interest on loan between individuals doesn't fall within Interest Income. That falls within Miscellaneous Income (*zatsu shotoku*). *See supra* note 9. Or that may fall within Business Income (*jigyo shotoku*) under ACT, art.27 (1) if loan is achieved as business transactions. *See* Judgment of Feb. 25, 1971, Tokyo District Court, TAINS: Z062-2693; Judgment of Mar. 28, 1984, Osaka District Court, TAINS: Z135-5318. *See also* KANEKO, *supra* note 5, at 205.
- ¹⁷ ACT, art.23 (2). In connection with Interest Income, expenses, if any, are though to be nominal. *See* DHC COMMENTARY: INCOME TAX ACT (DAI ICHI HOKI) 1444 (Revised at Feb. 25, 2016)[hereinafter cited as DHC].
- ¹⁸ ACT, art.120 (1).
- ¹⁹ ACT, art.181 (1).
- ²⁰ ACT, art.182 (i).
- ²¹ Under ACT, art.2 (1) (i), "*kokunai*" means the region where ACT is enforced.
- ²² Act on Special Measures Concerning Taxation (No. 26 of March 1957), art.3 (1). This Act, as a special rule, overrides ACT. *Id.*, art. 1.
- On 2013 some minor points are amended in connection with Income Taxation on Domestic Interest. *See* DHC, *supra* note 17, at 1457-58.
- ²³ *See* THE TAX COMMISSION, ZEISEI NO BAPPONTEKI MINAOSHI NI TUIE NO TOSHIN (REPORT ON FUNDAMENTAL REFORM OF TAXATION) 47 (1986), available at http://www.soken.or.jp/p_document/zeiseichousa_toushinshu.html. *See also* H. KANEKO, *Syotoku Zeisei Kaikaku no Houkou: Iwayuru "Bapponteki Zeisei Kaikaku" no Igi to Genkai* (Direction of Income Tax Reformation: Significance and Limitation of so called "Fundamental Tax Reformation"), in SHOTOKU KAZEI NO HOU TO SEISAKU (LAW AND POLICY OF INCOME TAXATION) 88, 113 (1996); H. KANEKO, *Rishi Shotoku Kazei no Arikata: Green Card no Mondai wo Fukumete* (Direction of Taxation on Interest Income: including the problem of Green Card), in SHOTOKU GAINEN NO KENKYU (INQUIRY INTO CONCEPT OF INCOME) 241 (1995).
- ²⁴ ACT, art. 5 (3), art. 174 (i) and art. 212 (3).
- ²⁵ As for these background, *see* 41 HANREI TIMES 77 (1954). *See also* Mizuno, *Kyuuyo tou igai no Gensen Tyousyu Seido* (Withholding from Income Other Than Salary and Retirement Incomes), 15 JOURNAL OF JAPAN TAX RESEARCH INSTITUTE 133, 160 n. 38 (1991).
- And *see also* "AO NO JIDAI (BLUE ERA) (1950)" written by MISHIMA Yukio, who is one of the most famous Japanese novelists.
- ²⁶ Act Regulating Money Lending Business (No. 170 of May 1949), *repealed by* Act Regulating the Receipt of Contributions, the Receipt of Deposits, and Interest Rates (No. 195 of Jun. 1954). And Banking Act (No. 21 of 1927), *amended by* Banking Act (No. 59 of Jun. 1981).
- ²⁷ *See* 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). Except for that, basic framework of Income Taxation is the same as the one already mentioned. *See* DHC, *supra* note 17, at 1415-16.
- ²⁸ Circular Notice stipulates practices inside of tax authorities. *See* KANEKO, *supra* note 5, at 109.
- ²⁹ As for classification of judgments, *see* 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); Mizuno, *supra* note 25, at 151-59.

- ³⁰ Judgment of Mar. 23, 1962, Tokyo District Court, LEX/DB: 21015940.
- ³¹ No. 89 of Apr. 1896, *amended by* Civil Code (No. 78 of Jun. 2006).
- ³² Judgment of Dec. 9, 1964, Tokyo High Court, LEX/DB: 21020210.
- ³³ Judgment of Dec. 25, 1962, Chiba District Court, LEX/DB: 21016910. As for case comment, *see* Nakagawa, 15 STEUER 12 (1963). As for judgment of upper court, *see* Judgment of Dec. 9, 1964, Tokyo High Court, LEX/DB: 21020210, which seems to have adopted mainly legal perspective. As for case comment, *see* Sugai, 50 STEUER 1 (1966); Kitano, 17 JURIST 66 (1968); Masuda, 178 JURIST 58 (2005) ; Matsubara, 207 JURIST 64 (2011).
- ³⁴ As mentioned earlier relevant legislations provided for criminal sanctions in connection with economic nature.
- ³⁵ Judgment of Apr. 28, 1966, Tokyo High Court, LEX/DB: 21023430.
- ³⁶ Judgment of May. 17, 1966, Tokyo High Court, TAINS: Z044-1501, *aff'd*, Judgment of Apr. 30, 1965, Tokyo District Court, TAINS: Z041-1389.
- ³⁷ 16 TYUSHAKU MINPOU (COMMENTARY ON CIVIL CODE) 383 (T. Ikuyo and T. Hironaka newly ed. 1989).
- ³⁸ *See Id.* at 395.
- ³⁹ *Id.* at 396.
- ⁴⁰ In connection with judges on 2) plaintiff collected certain amount from its one or two employees during extremely short terms with high interest. Or plaintiff had collected certain amount from its two or three directors, but didn't pay back. Judges here raised the questions of whether or not interests paid in connection with them fell within Interest Income.
- ⁴¹ As for legal approach, *see* KANEKO, *supra* note 5, at 205. As for economic approach, *see* Sato, *supra* note 29, at 72-73. As for understanding of view of Kaneko, *see* H. SATO, STANDARD SHOTOKU ZEI HOU (STANDARD INCOME TAX ACT) 68 (2nd Ed. 2016). *See also* Sato, *Rishi Shotoku no Igi to Hensokuteki na Rishi ni Kansuru Kazei Houhou* (The Concept of Interest Income and taxation on extraordinary interest), 10 RESEARCH ON TAX CASE 33 (1991);
- ⁴² Judgment of Jan. 24, 2006, Tokyo District Court, TAINS: Z256-10274, *aff'd*, Judgment of Aug. 17, 2006, Tokyo High Court, TAINS: Z256-10489, *appeal dismissed*, Judgment of Aug. 23, 2007, Supreme Court, TAINS: Z257-10766. As for case comment, *see* As for case comment, *see* SAKAI, *supra* note 27 at 81; Nagato, 228 JURIST 68 (2016).
- ⁴³ Judgment of Jul. 1, 2005, Tokyo District Court, TAINS: Z255-10069, *aff'd*, Judgment of Dec. 21, 2005, Tokyo High Court, TAINS: Z255-10251, *appeal dismissed*, Judgment of Aug. 23, 2007, Supreme Court, TAINS: Z257-10765.
- ⁴⁴ Territorial limitation cannot be read from relevant legislations.
By the way relevant Circular Notice concern the requirement of bank and other financial institutions. Under it they should be permitted to do their business in accordance with Act. And in the context of tax practice payments having nothing to do with these institutions are classified as Miscellaneous Income. *See* DHC, *supra* note 17, at.
- ⁴⁵ *See* Masui, *Taxation of Cross-Border Interest Flows: Japanese Responses*, in STAATEN UND STEUERN: FESTSCHRIFT FUER KLAUS VOGEL ZUM 70. GEBURTSTAG 863, 867 (P. Kirchhof, M. Lehner, A. Raupach, M. Rodi ed. 2000). As for other authority indicating international tax problem on Interest Income, *see* SAKAI, *supra* note 27 at 76 n.2.
- ⁴⁶ ACT, art. 35 (2) (ii).
- ⁴⁷ *See* Suzuki, *supra* note 2, at 118.
- ⁴⁸ Act on General Rules for Application of Laws, art. 7-10.
- ⁴⁹ In practically information of Japanese resident on "foreign" deposits is necessary to exercise appropriate Income Taxation. For this purpose tax conventions on information exchange will play a central role.