

This document is a translation of the original Japanese-language Directive. The Japanese original is the official text.

Document ID:

Office of Mutual Agreement Procedures 1-39

International Operations Division 3-3

Taxation Management Division 1-23

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Date: June 25, 2001 (The latest amendment: August 29, 2011)

To: Regional Commissioners, Regional Taxation Bureaus

Regional Commissioner, Okinawa Regional Taxation Office

From: Commissioner, National Tax Agency

## Commissioner's Directive on the Mutual Agreement Procedure (Administrative Guidelines)

With regard to the mutual agreement procedure provided for in tax treaties, the procedures established below shall be followed from now on.

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Agreement Procedure" issued on March 3, 1992 [Document ID: International Operations Division 3-2 and others] are hereby repealed.

(Purpose)

This directive clarifies the procedures with regard to the mutual agreement procedure provided for in tax treaties.

## Chapter 1: General Rules

### 1. Definition of Terms

The meanings of the terms in this directive are as prescribed in the following.

- (a) Tax treaty: Convention or agreement Japan has concluded for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, or convention or agreement Japan has concluded for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on estates, inheritances and gifts.
- (b) Treaty partner: A contracting state or a party of a tax treaty other than Japan.
- (c) Mutual agreement procedure: Consultations between the competent authority of Japan and the competent authority of a treaty partner pursuant to provisions of a tax treaty.
- (d) Ministerial Ordinance (Income Tax Treaty): The Ministerial Ordinance Implementing the Act on Special Provisions of the Income Tax Act, the Corporation Tax Act, and the Local Tax Act regarding the Application of Tax Treaties (1969 Ministry of Finance/Ministry of Home Affairs Ordinance No. 1).
- (e) Ministerial Ordinance (Inheritance Tax Convention): The Ministerial Ordinance Implementing the Act on Special Provisions of the Inheritance Tax Act regarding the Application 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 in Japan pursuant to paragraph 1 of Article 66-4 [Special Provisions for Taxation on Transactions with Foreign Affiliated Persons] or paragraph 1 of Article 68-88 [Special Provisions for Taxation on Transactions with Foreign Affiliated Persons of Consolidated Corporations] of the Act on Special Measures Concerning Taxation, or similar taxation in a treaty partner.
- (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: Large Enterprise Examination Division 7-1 and others].
- (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: Large Enterprise Examination Division 7-4 and others].
- (i) Grace of tax payment: Grace of tax payment provided for in paragraph 1 of Article 66-4-2 [Grace of Tax Payment Concerning Special Provisions for Taxation on Transactions with Foreign Affiliated Persons] or paragraph 1 of Article 68-88-2 [Grace of Tax Payment Concerning Special Provisions for Taxation on Transactions with Consolidated Corporations and Foreign Affiliated Persons] of the Act on Special Measures Concerning Taxation.
- (j) Directive on the Handling of the Grace of Tax Payment, etc.: The directive on the

handling of the grace of tax payment, etc. provided for in the Establishment of the Commissioner's Directive on the Handling of the Grace of Tax Payment, etc. (Directive on the Interpretation of Act) issued on June 3, 1976 [Document ID: Collection Division 3-2 and other].

- (k) APA: An advanced pricing arrangement prescribed in 1-1(23) of the Commissioner's Directive on the Operation of Transfer Pricing (including an arrangement with regard to dealings between a head office and a branch office to which the Commissioner's Directive on the Operation of Transfer Pricing is applied, *mutatis mutandis*, according to 5-24 of the Directive) or in 1-1(25) of the Commissioner's Directive on the Operation of Transfer Pricing for Consolidated Corporations, or similar to these in a treaty partner.
- (l) Tax return: A tax return prescribed in item 37 of paragraph 1 of Article 2 of the Income Tax Act and item 31 of Article 2 of the Corporation Tax Act or item 2 and 3 of Article 1-2 of the Inheritance Tax Act, and documents that are to be attached to them.
- (m) Consolidated tax return: A consolidated tax return prescribed in item 32 of Article 2 of the Corporation Tax Act and documents that are to be attached to it.
- (n) Notification of individually allocated amount, etc.: A document a consolidated subsidiary is to file with the District Director of the Tax Office having jurisdiction over the place of the head office or main office of the consolidated subsidiary under item 1 and 2 of Article 81-25 of the Corporation Tax Act.
- (o) Resident: A resident prescribed in item 3 of paragraph 1 of Article 2 of the Income Tax Act.
- (p) Non-resident: A non-resident prescribed in item 5 of paragraph 1 of Article 2 of the Income Tax Act.
- (q) Domestic corporation: A domestic corporation prescribed in item 3 of Article 2 of the Corporation Tax Act.
- (r) Foreign corporation: A foreign corporation prescribed in item 4 of Article 2 of the Corporation Tax Act.
- (s) Consolidated parent corporation: A consolidated parent corporation prescribed in item 12-7-2 of Article 2 of the Corporation Tax Act.
- (t) Consolidated subsidiary: A consolidated subsidiary prescribed in item 12-7-3 of Article 2 of the Corporation Tax Act.
- (u) Consolidated corporation: A consolidated corporation prescribed in item 12-7-4 of Article 2 of the Corporation Tax Act.
- (v) Applicant: An individual or a domestic corporation that has filed a request for a mutual agreement procedure in Japan.
- (w) Foreign affiliated person: A foreign affiliated person prescribed in paragraph 1 of Article 66-4 or paragraph 1 of Article 68-88 of the Act on Special Measures Concerning Taxation, or a person similar to these prescribed in treaty partner's laws or regulations on transfer pricing taxation.

- (x) Office of Mutual Agreement Procedures: The Office of Mutual Agreement Procedures of the Commissioner's Secretariat of the National Tax Agency.
- (y) NTA Collection Division: The Collection Division of the Collection Department of the National Tax Agency.
- (z) 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; the Revenue Management and Processing Division of the Collection Department of the National Tax Agency; or the Large Enterprise Examination Division of the Large Enterprise Examination and Criminal Investigation Department of the National Tax Agency.
- (aa) RTB Special Collection Group: The First Special Collection Co-ordination Divisions of the Collection Departments of the Regional Taxation Bureaus (the Special Collection Co-ordination Division in the case of the Kantoshinetsu and Nagoya Regional Taxation Bureaus, the First Special Collection Group in the case of the Sapporo, Sendai, Hiroshima, Takamatsu, Fukuoka and Kumamoto Regional Taxation Bureaus, and the Special Collection Group in the case of the Kanazawa Regional Taxation Bureau), or the Special Collection Group of the Okinawa Regional Taxation Office.
- (bb) Related RTB division: The Taxation Management Divisions, Individual Taxation Divisions or Property Taxation Divisions of the First Taxation Departments of the Regional Taxation Bureaus (or of the Taxation Departments in the cases of the Kanazawa, Takamatsu and Kumamoto Regional Taxation Bureaus); or the Corporation Taxation Divisions of the Second Taxation Departments of the Regional Taxation Bureaus (or of the Taxation Departments in the cases of the Kanazawa, Takamatsu and Kumamoto Regional Taxation Bureaus); the Revenue Management and Processing Divisions or the Collection Divisions of the Collection Departments of the Regional Taxation Bureaus; the Management Divisions (Large Enterprise Examination) of the Large Enterprise Examination and Criminal Investigation Departments of the Regional Taxation Bureaus (or of the First Large Enterprise Examination Departments in the cases of the Tokyo and Osaka Regional Taxation Bureaus; or of the Large Enterprise Examination Department in the case of the Nagoya Regional Taxation Bureau); or the Taxation Management Division, Individual Taxation Division, Property Taxation Division, Corporation Taxation Division, Collection Division or Large Enterprise Examination Division of the Okinawa Regional Taxation Office.
- (cc) Revenue Management and Processing Group: The group that is in charge of revenue management and processing affairs in the Tax Office (the Co-ordination Division in the case of a Tax Office that has no Revenue Management and Processing Group).
- (dd) Collection Group: The group that is in charge of tax collection affairs in the Tax Office (the Co-ordination Division in the case of a Tax Office that has no Collection Group).
- (ee) Corporation Management Group: The group that is in charge of affairs related to

corporation tax, withholding income tax, consumption tax in connection with the transfer, etc. of a corporation's properties, liquor tax and other indirect taxes in the Tax Office.

- (ff) Grace of tax collection (of local taxes): Grace of tax collection provided for in Article 55-2 [Grace of Tax Collection for a Corporation's Prefectural Resident Tax Where a Mutual Agreement Procedure Has Been Requested Pursuant to the Provisions of an Applicable Tax Treaty] (or in Article 55-4 [Grace of Tax Collection for a Corporation's Prefectural Resident Tax Where the Consolidated Parent Corporation Has Requested a Mutual Agreement Procedure Pursuant to the Provisions of an Applicable Tax Treaty] in the case of consolidated corporation), Article 72-39-2 [Grace of Tax Collection for a Corporation's Business Tax Where a Mutual Agreement Procedure Has Been Requested pursuant to the Provisions of an Applicable Tax Treaty] (or in Article 72-39-4 [Grace of Tax Collection for a Corporation's Business Tax Where a Consolidated Parent Corporation Has Requested a Mutual Agreement Procedure Pursuant to the Provisions of an Applicable Tax Treaty] in the case of consolidated corporation) or Article 321-11-2 [Grace of Tax Collection for a Corporation's Municipal Inhabitant Tax Where a Mutual Agreement Procedure Has Been Requested Pursuant to the Provisions of an Applicable Tax Treaty] (or in Article 321-11-3 [Grace of Tax Collection for a Corporation's Municipal Inhabitant Tax Where the Consolidated Parent Corporation Has Requested a Mutual Agreement Procedure Pursuant to the Provisions of an Applicable Tax Treaty] in the case of consolidated corporation) of the Local Tax Act.
- (gg) Notification to prefectures regarding the grace of tax collection (of local taxes): A notification prescribed in Article 55-3 [The NTA Commissioner's Notification Regarding the Grace of Tax Collection for a Corporation's Prefectural Resident Tax] (or in Article 55-5 [The NTA Commissioner's Notification Regarding the Grace of Tax Collection for a Consolidated Corporation's Prefectural Resident Tax] in the case of consolidated corporations) or notification prescribed in Article 72-39-3 [The NTA Commissioner's Notification Regarding the Grace of Tax Collection for Corporations' Business Tax] (or in Article 72-39-5 [The NTA Commissioner's Notification Regarding the Grace of Tax Collection Consolidated Corporations' Business Tax] in the case of consolidated corporations) of the Local Tax Act.
- (hh) The amount of individually allocated corporation tax: The amount of individually allocated corporation tax prescribed in item 4-2 of paragraph 1 of Article 23 [The Definition of Terms Relating to Prefectural Resident Tax] of the Local Tax Act.
- (ii) The Prefectural Resident Tax Division: The division, office etc. in a prefectural government that is in charge of affairs regarding prefectural resident tax and business tax.
- (jj) Taxable year: A taxable year prescribed in Article 13 (including periods that are to be deemed to be a taxable year pursuant to Article 14) or a consolidated taxable year

prescribed in Article 15-2 of the Corporation Tax Act.

(kk) Implementing Arrangement Regarding the Arbitration Procedure: An arrangement that the competent authorities of Japan and a treaty partner have established by mutual agreement pursuant to the provisions of an applicable tax treaty regarding the mode of application of the arbitration procedure.

## 2. Implementation of the Mutual Agreement Procedure

(1) The Office of Mutual Agreement Procedures shall deal with mutual agreement procedures for the specific cases. Administrative affairs concerning the grace of tax payment prescribed in 1(i) shall be dealt with by the RTB Special Collection Group.

(Note) It should be noted that the Tax Bureau of the Ministry of Finance shall deal with the mutual agreement procedure with regard 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 the provisions of tax treaties.

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

(Note) It should be noted that the Office of Mutual Agreement Procedures is to consult with the Ministry of Internal Affairs and Communications in advance where the mutual agreement procedure or the content of the mutual agreement is related to taxes imposed on by a local government, according to paragraph 1 of Article 8 [Mutual Agreement Procedure under Tax Treaties Concerning Local Taxes] of the Act on Special Provisions of the Income Tax Act, the Corporation Tax Act and the Local Tax Act regarding the Application of Tax Treaties (1969 Act No. 46).

## Chapter 2: Mutual Agreement Procedure Requested by Residents or Domestic Corporations, etc.

### 3. Request for the Mutual Agreement Procedure

A requests for a mutual agreement procedure can be made pursuant to the provisions of an applicable tax treaty, and in accordance with paragraph 1 or 4 of Article 12 [Procedures for Requests Related to Taxation Not in Accordance with the Provisions of a Tax Treaty] or paragraph 1 of Article 13 [Procedures for Requests Related to Dual Residency] of the Ministerial Ordinance (Income Tax Treaty) or paragraph 1 of Article 3 [Procedures for Requests Related to Double Taxation] of the Ministerial Ordinance (Inheritance Tax Convention).

(Notes) The following are examples of cases in which a request for a mutual agreement

procedure can be made.

- (a) Cases in which a domestic corporation requests a mutual agreement procedure on the grounds that the corporation has been, or will be subject to transfer pricing taxation in Japan or in a treaty partner regarding transactions between the domestic corporation and its foreign affiliated person.
- (b) Cases in which a domestic corporation requests a mutual agreement procedure with regard to its APA request regarding transactions between the domestic corporation and its foreign affiliated person in accordance with the Commissioner's Directive on the Operation of Transfer Pricing or the Commissioner's Directive on the Operation of Transfer Pricing for Consolidated Corporations.
- (c) Cases in which a resident or a domestic corporation requests a mutual agreement procedure on the grounds that the resident or the domestic corporation has been, or will be subject to taxation not in accordance with the provisions of the applicable tax treaty regarding the presence of its permanent establishment in a treaty partner, or regarding the amount of profit attributable to the permanent establishment.
- (d) Cases in which a resident or a domestic corporation requests a mutual agreement procedure on the grounds that the resident or the domestic corporation has been, or will be subject to taxation not in accordance with the provisions of the applicable tax treaty regarding income tax withheld in the treaty partner.
- (e) Cases in which a non-resident who has Japanese nationality requests a mutual agreement procedure on the grounds that the person has been, or will be subject to more burdensome taxation or requirements in a treaty partner than the taxation or requirements applied to the nationals of the treaty partner.
- (f) Cases in which a Japanese resident who is also regarded as a resident of a treaty partner under laws of the treaty partner requests a mutual agreement procedure in order to determine the nation of which the individual is to be deemed to be a resident under the applicable tax treaty.
- (g) Cases in which an individual who is liable for inheritance tax or gift tax under the Inheritance Tax Act requests a mutual agreement procedure in order to avoid double taxation in accordance with paragraph 1 of Article 3 of the Ministerial Ordinance (Inheritance Tax Convention).

#### 4. Time Limit

It should be noted that some tax treaties have provisions that set time limits governing requests for the mutual agreement procedure.

#### 5. Pre-filing Consultation

- (1) The Office of Mutual Agreement Procedures will accede to a request for a pre-filing consultation, including a consultation on an anonymous basis through an agent, prior to the

applicant's request for a mutual agreement procedure.

(2) Where the request for a pre-filing consultation is in relation to an APA, upon a request by the Office of Mutual Agreement Procedures, the related NTA division or the related RTB division prescribed in 1-1(26) of the Commissioner's Directive on the Operation of Transfer Pricing or in 1-1(28) of the Commissioner's Directive on the Operation of Transfer Pricing for Consolidated Corporations may participate in pre-filing consultations as necessary.

(Note) It should be noted that a prospective applicant for a mutual agreement procedure in relation to an APA can request a pre-filing consultation either with the Office of Mutual Agreement Procedures or with the related RTB division in charge of the APA review, since the related RTB division also accedes to a request for a pre-filing consultation prior to an APA request (refer to 5-10 of the Commissioner's Directive on the Operation of Transfer Pricing or in 5-10 of the Commissioner's Directive on the Operation of Transfer Pricing for Consolidated Corporations).

(3) Where the Office of Mutual Agreement Procedures has acceded to a request for a pre-filing consultation in (1), it may, as necessary, ask the related NTA divisions to take measures to retain the documents necessary for a mutual agreement procedure or for implementing an agreement under a mutual agreement procedure. These documents include tax returns (in the case of consolidated corporations, consolidated tax returns and notifications of the individually allocated amount, etc.), letters of assessment, examination documents for withholding income tax, tax collection cards, etc (hereinafter collectively referred to as "tax returns, etc.").

(4) Where the Office of Mutual Agreement Procedures has found that the prospective applicant has its intention to apply for the grace of tax payment in the course of a pre-filing consultation provided for in (1), it will, as necessary, inform the related NTA divisions and the NTA Collection Division of that fact.

(5) Where a related NTA division has been asked to take measures to retain tax returns, etc. in (3) from the Office of Mutual Agreement Procedures, it will instruct the related RTB divisions not to dispose of the tax returns, etc. even if the document retention periods prescribed in the Regulations on the Treatment of Administrative Documents of the National Tax Agency [the National Tax Agency Regulation 2011-1] has been exceeded.

(6) Where the related NTA division and the NTA Collection Division have been informed in (4) from the Office of Mutual Agreement Procedures, they will, as necessary, give necessary instructions to the related RTB divisions and the RTB Special Collection Group.

(7) Where the related RTB division has received the instructions in (5) or (6) from the related NTA divisions and the NTA Collection Division, it shall provide the necessary instructions to the District Director of the Tax Office in charge.

## 6. Procedures for Requesting the Mutual Agreement Procedure

(1) A request for a mutual agreement procedure shall be made by submitting the Application for the Mutual Agreement Procedure (Form 1) and the documents listed below (hereinafter referred to as "attachments") to the Office of Mutual Agreement Procedures.

A request for a mutual agreement procedure regarding taxation or an APA on the transactions of a consolidated subsidiary with its foreign affiliated persons shall be made by the consolidated parent corporation of the consolidated subsidiary to the Office of Mutual Agreement Procedures.

(Notes) Where an Application for a Mutual Agreement Procedure has been submitted to a Tax Office by mistake, the Revenue Management and Processing Group shall send it to the Office of Mutual Agreement Procedures without delay and notify the applicant of that fact.

- (a) Where the request is regarding taxation in Japan or in a treaty partner: copies of the letter of the assessment or other documents that substantiate the taxation, a written description of the details of the facts and an outline of the position of the applicant or its foreign affiliated person regarding the taxation (where the tax has yet to be assessed, a written description of the details of the situation that will result in taxation and an outline of the position of the applicant or its foreign affiliated person regarding the taxation).
- (b) Where the request is regarding taxation in Japan or in a treaty partner, and the applicant or its foreign affiliated person has filed an administrative appeal or a lawsuit regarding the taxation: in addition to the documents 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 affiliated person regarding the taxation in the administrative appeal or lawsuit, together with a copy of the complaint for the administrative appeal or the lawsuit.
- (c) Where the request is regarding transfer pricing taxation in Japan or in a treaty partner: in addition to the documents in (a), documents describing the direct or indirect capital relationship or relationship of control between the parties involved in the transactions that are the subject of the request.
- (d) Where the request is related to Article 13 [Procedures for Requests Related to Dual Residency] of the Ministerial Ordinance (Income Tax Treaty), and the applicable tax treaty or intergovernmental agreements appended to the tax treaty include specifications for items that should be considered in a mutual agreement procedure: in addition to the documents in (a), documents explaining those items.
- (e) Where the applicant or its foreign affiliated person has filed a request for a mutual agreement procedure with the competent authority of the treaty partner: in addition to the documents in (a), a copy of documents substantiating that fact.
- (f) Other documents that explain issues relevant to the mutual agreement procedure.

(2) It should be noted that a request for a mutual agreement procedure is for an APA, the related documents are to be attached to the Application for the APA or the Consolidated APA, and sent to the Office of Mutual Agreement Procedures by the District Director of the Tax Office having jurisdiction over the place of the tax payment of the applicant corporation or the consolidated corporation (by the Regional Commissioner of the Regional Taxation Bureau or the Okinawa Taxation Office where the applicant is under the jurisdiction of the RTB Large Enterprise Examination Division) via a related NTA division (refer to 5-2 to 5-6 of the Commissioner's Directive on the Operation of Transfer Pricing or 5-2 to 5-6 of the Commissioner's Directive on the Operation of Transfer Pricing for Consolidated Corporations).

## 7. Grace of Tax Payment

Where a domestic corporation requests a mutual agreement procedure in 3 or where a foreign corporation requests a mutual agreement procedure with the competent authority of a treaty partner, the domestic corporation or foreign corporation may apply for the grace of tax payment defined in 1(i). The grace of tax payment is limited to the amount calculated in paragraph 1 of Article 39-12-2 [Application Procedures, etc. for a Grace of Tax Payment Pertaining to Special Provisions for Taxation on Transactions with Foreign Affiliated Persons] or paragraph 1 of Article 39-112-2 [Application Procedures, etc. for Grace of Tax Payment under the Special Provisions for Taxation on Transaction of Consolidated Corporations with Foreign Affiliated Persons] of the Order for Enforcement of the Act on Special Measures Concerning Taxation as the amount of the corporation tax and additional tax to the corporation tax to be paid with regard to the request for a mutual agreement procedure as a result of taxation under item 1 of paragraph 15 of Article 66-4 or item 1 of paragraph 16 of Article 68-88 of the Act on Special Measures Concerning Taxation.

### (1) Requirements for the Grace of Tax Payment

A request for a grace of tax payment will be approved in accordance with Article 66-4-2 or Article 68-88-2 of the Act on Special Measures Concerning Taxation if all of the following requirements are met:

- (a) The applicant domestic corporation or foreign corporation has been subject to taxation under item 1 of paragraph 15 of Article 66-4 or item 1 of paragraph 16 of Article 68-88 of the Act on Special Measures Concerning Taxation;
- (b) The applicant domestic corporation or foreign corporation has requested a mutual agreement procedure;
- (c) The amount of corporation tax regarding the application for the grace of tax payment (hereinafter referred to as the "corporation tax related to the grace of tax payment") resulted from taxation in (a) is the subject of the consideration with a treaty partner in a mutual agreement procedure requested in (b).
- (d) The applicant does not have any delinquent national taxes other than the corporation

tax related to the grace of tax payment; and

- (e) In principle, the applicant deposits a security equivalent to the corporation tax relating to the grace of tax payment.

## (2) Application Procedures

(a) The applicant domestic corporation or foreign corporation for a grace of tax payment shall submit two sets (the original and a copy) of the Application for the Grace of Tax Payment (Form 6-1) stating the amount of corporation tax related to the grace of tax payment and other necessary information with two copies of the attachments in (3) (hereinafter collectively referred to as "Application for a Grace of Tax Payment, etc.") to the District Director of the Tax Office having jurisdiction over the place of the applicant (the Regional Commissioner of the Regional Taxation Bureau in charge where the collection affairs for national taxes on the domestic corporation or foreign corporation has been handed over to the Regional Commissioner of the Regional Taxation Bureau according to paragraph 3 of Article 43 [Tax Offices in Charge of Collection of National Taxes] of the Act on General Rules for National Taxes). The domestic corporation or foreign corporation applying for the Grace of Tax Payment shall also deposit a security in (4) and (5).

(Note) It should be noted that an application for a grace of tax payment can be made to the corporation tax related to the Grace of Tax Payment only after the taxation under item 1 of paragraph 16 of Article 66-4 or item 1 of paragraph 16 of Article 68-88 of the Act on Special Measures Concerning Taxation has been made.

(b) The original Application for the Grace of Tax Payment, etc. and a security shall be forwarded to the Collection Group, and a copy of the Application for the Grace of Tax Payment, etc. shall be forwarded to the Corporation Management Group. However, this shall not apply where the Application for the Grace of Tax Payment, etc. is submitted to the Regional Commissioner of the Regional Taxation Bureau.

## (3) Attachments

Two copies of the following documents shall be attached to the Application for the Grace of Tax Payment:

- (a) A document showing that a request for a mutual agreement procedure under 3 has been made to the competent authority of Japan or the treaty partner, and where the request for the mutual agreement procedure has been made to the competent authority of the treaty partner, Japanese translation of the application; and
- (b) A document showing that the corporation tax related to the grace of tax payment is resulted from taxation under item 1 of paragraph 15 of Article 66-4 or item 1 of paragraph 16 of Article 68-88 of the Act on Special Measures Concerning Taxation, and that the taxation is the subject of the consideration with the treaty partner in the mutual agreement procedure that the applicant has requested.

#### (4) Depositing of the Security

An applicant domestic corporation or foreign corporation shall, except for the cases below, deposit a security equivalent to the corporation tax related to the grace of tax payment along with the submission of the Application for the Grace of Tax Payment. Where the applicant has had assets seized for delinquent corporation tax related to the grace of tax payment, the value of those assets (limited to the amount to be appropriated to national taxes) shall be deducted from the amount of security:

- (a) Where the amount of corporation tax related to the grace of tax payment is 500,000 yen or less.
- (b) Where the applicant is in special circumstances and not able to deposit a security.

#### (5) Kinds of the Security and the Procedures for Depositing the Security

##### (a) Kinds of the Security

The Security for the grace of tax payment shall be the kinds of security listed in Article 50 [Kinds of Security] of the Act on General Rules for National Taxes as follows. (Refer to Chapter 4 of Section 2 of the Commissioner's Directive on the Handling of the Grace of Tax Payment, etc. for more detailed information):

- (i) Government bonds and local Government bonds.
- (ii) Corporate bonds (including bonds issued by corporations established under special acts) and other securities that the District Director of the Tax Office or the Regional Commissioner of the Regional Taxation Bureau approves as reliable.
- (iii) Land.
- (iv) Buildings, living trees, and registered vessels, aircrafts, propeller planes, automobiles and construction machines that have been insured.
- (v) Railway foundations, factory foundations, mining foundations, streetcar foundations, canal foundations, fishery foundations, port transportation foundations, road transportation foundations and tourist foundations.
- (vi) A guarantee by a guarantor whom the District Director of the Tax Office or the Regional Commissioner of the Regional Taxation Bureau approves as reliable.
- (vii) Money.

##### (b) Procedures for Depositing the Security

When the applicant deposits the security, the applicant shall submit, in addition to the documents below, the documents specified in Chapter 4 of Section 2 of the Commissioner's Directive on the Handling of the Grace of Tax Payment, etc. according to the kind of the security. The Collection Group or the RTB Special Collection Group shall, when it has received the security and related documents, record the fact of the receipt and the details of the security, etc. in the security ledger prescribed in the Commissioner's Directive on the Handling of the Grace of Tax Payment, etc.

- (i) A Security Deposit Form (Form 6-2.)
- (ii) Where assets owned by a third party are deposited as the security, the statement

from the third party of consent to the deposit of those assets and the certificate of the seal impression.

- (iii) Where the security is in the possession of a corporation or a person without legal capacity, the document certifying the qualifications of the representative of the corporation or the legal representative (special representative where the act of representation falls under Article 826 [Act Involving a Conflict of Interest] of the Civil Code) of the person and the certificate of the seal impression.

(6) Handing over Collection Affairs, etc. to the Regional Commissioner of the Regional Taxation Bureau.

Where the Collection Group has received the Application for the Grace of Tax Payment, etc. in (2)(b), it shall promptly ask the Revenue Management and Processing Group to take measures to hand over the collection affairs of the national taxes on the applicant to the RTB Special Collection Group pursuant to paragraph 3 of Article 43 of the Act on General Rules for National Taxes, and to proceed with other affairs related to the grace of tax payment. The Revenue Management and Processing Group shall hand over the collection affairs and proceed with other affairs related to the grace of tax payment promptly.

(7) Sending of Documents Relating to the Grace of Tax Payment

- (a) The Revenue Management and Processing Group shall send the original Application for the Grace of Tax Payment, etc. and the security related to the collection affairs asked to hand over to the RTB Special Collection Group in (6). The Revenue Management and Processing Group shall also notify the RTB Special Collection Group whether the applicant has any delinquent national taxes other than the corporation tax related to the grace of tax payment.

However, this shall not apply where the Application for the Grace of Tax Payment, etc. is submitted to the Regional Commissioner of the Regional Taxation Bureau.

- (b) The Corporation Management Group shall send a copy of the Application for the Grace of Tax Payment, etc. it has received in (2)(b) to the Office of Mutual Agreement Procedures. However, this shall not apply where the Application for the Grace of Tax Payment, etc. is submitted to the Regional Commissioner of the Regional Taxation Bureau.

- (c) Where the Application for the Grace of Tax Payment, etc. is submitted to the Regional Commissioner of the Regional Taxation Bureau, the RTB Special Collection Group shall keep the original Application for the Grace of Tax Payment, etc. and the security, and send a copy of the Application for the Grace of Tax Payment etc. to the Office of Mutual Agreement Procedures via the NTA Collection Division.

(8) Notice of the Amount Subject to the Grace of Tax Payment

- (a) Where the Corporation Management Group or the RTB Large Enterprise Examination Division (the Management Division of the Large Enterprise Examination and Criminal Investigation Department of the Regional Taxation Bureau (or of the First

Large Enterprise Examination Department in the cases of the Tokyo and Osaka Regional Taxation Bureaus; or of the Large Enterprise Examination Department in the case of the Nagoya Regional Taxation Bureau) and the Large Enterprise Examination Division of the Okinawa Regional Taxation Office; hereinafter the same in 7 and 8) has found in a transfer pricing examination that a domestic corporation or a foreign corporation has its intention to apply for a grace of tax payment, it shall notify the RTB Special Collection Group to which the collection affairs are to be handed over and the related NTA divisions (where the Corporation Management Group notifies the related NTA divisions, via the RTB Corporation Taxation Division (the Corporation Taxation Division of the Second Taxation Department (the Taxation Department in the cases of the Kanazawa, Takamatsu, and Kumamoto Regional Taxation Bureaus) of the Regional Taxation Bureau and the Corporation Taxation Division of the Okinawa Regional Taxation Office; hereinafter the same in 7 and 8)) of the amount of corporation tax for which a grace of tax payment may be granted.

(b) Where the related NTA division (the Corporation Taxation Division of the Taxation Department or the Examination Division of the Large Enterprise Examination and Criminal Investigation Department of the National Tax Agency; hereinafter the same in 7 and 8) has received the notification in (a) from the related RTB divisions (the RTB Large Enterprise Examination Division or the RTB Corporation Taxation Division; hereinafter the same in 7 and 8), it shall notify the Office of Mutual Agreement Procedures of the amount of corporation tax for which a grace of tax payment may be granted.

(c) Where the Office of Mutual Agreement Procedures has received a copy of the Application for the Grace of Tax Payment, etc. in (7)(b) or (c), it may inquire, as necessary, of the related NTA divisions about the amount of corporation tax for which a grace of tax payment may be granted.

(d) Where the related NTA division has received an inquiry in (c) from the Office of Mutual Agreement Procedures, it shall instruct the RTB Large Enterprise Examination Division or the Corporation Management Group (via the RTB Corporation Taxation Division) to notify the related NTA divisions (where the Corporation Management Group notifies the related NTA division, via the RTB Corporation Taxation Division) and the RTB Special Collection Group of the amount of corporation tax for which a grace of tax payment may be granted, and shall notify the Office of Mutual Agreement Procedures of the amount of corporation tax for which the grace of tax payment may be granted in connection with that notification.

(9) Confirmation, etc. of a Request for a Mutual Agreement Procedure with the Competent Authority of a Treaty Partner

Where a foreign corporation has applied for a grace of tax payment, the Office of Mutual Agreement Procedures shall ask the competent authority of the treaty partner whether a

request for a mutual agreement procedure has been made regarding the corporation tax related to the grace of tax payment. The Office of Mutual Agreement Procedures will check the subsequent situation as necessary.

(Note) Whether or not a request for a mutual agreement procedure regarding the corporation tax related to the grace of tax payment has been made in the treaty partner will be decided, in principle, by a proposal for a mutual agreement procedure from the treaty partner.

(10) Examination, etc. Concerning Requirements for a Grace of Tax Payment

(a) The RTB Special Collection Group to which the collection affairs have been handed over shall examine whether the security deposited by a domestic corporation or a foreign corporation is sufficient to the corporation tax related to the grace of tax payment, and whether that corporation has any delinquent national taxes other than the corporation tax related to the grace of tax payment.

The valuation of the security shall be made according to Chapter 4 of Section 2 of the Commissioner's Directive on the Handling of the Grace of Tax Payment, etc.

(b) Where the Office of Mutual Agreement Procedures has received a copy of the Application for the Grace of Tax Payment, etc. under (7)(b) or (c), it shall confirm whether the application meets the requirements in (1)(a), (b) and (c), and inform the RTB Special Collection Group of that fact via the NTA Collection Division.

(11) Approval for the Grace of Tax Payment

(a) Where an application for a grace of tax payment meets the requirements in (1), the RTB Special Collection Group shall suspend the payment of corporation tax related to the application and inform the applicant (including guarantors and third party mortgagors or pledgers) of that fact, the amount of corporation tax for which the grace of tax payment is granted and other necessary matters, using Form 6-3.

Where the amount of corporation tax and additional tax to the corporation tax stated in the Application for the Grace of Tax Payment exceeds the amount of which the related RTB divisions gave notification as the amount of corporation tax for which the grace of tax payment may be granted in (8), the grace of tax payment shall be limited to the latter amount.

(b) Where (a) applies, the RTB Special Collection Group shall notify the related RTB divisions and the Office of Mutual Agreement Procedures (via the NTA Collection Division) of that fact.

(c) Where a related RTB division has received the notification in (b), it shall notify the related NTA divisions (where the related division is the RTB Corporation Taxation Division, it shall notify the Corporation Management Group as well) of that fact.

(12) Period of the Grace of Tax Payment

The period of the grace of tax payment shall be a period from the day following the due date of corporation tax payment resulting from taxation under item 1 of paragraph 15 of

Article 66-4 or item 1 of paragraph 16 of Article 68-88 of the Act on Special Measures Concerning Taxation (where the date of the application for a grace of tax payment is later than the due date, the day following the day of the application) to the day on which one month elapses from the day following the date of the correction made according to the mutual agreement with the competent authority of the treaty partner (where the case falls under one of the following, one month after the day following the date of the Commissioner's notification of the fact) (hereinafter referred to as the "period of the grace of tax payment"):

- (a) Where the Commissioner proposed to terminate a mutual agreement procedure because it considered that no agreement would be reached even if the mutual agreement procedure was continued, and the competent authority of the treaty partner has agreed with the proposal.
- (b) Where the competent authority of the treaty partner proposed to terminate mutual agreement procedure because it considered that no agreement would be reached even if that mutual agreement procedure was continued, and the Commissioner has agreed with the proposal.
- (c) Where an agreement reached on taxation under item 1 of paragraph 15 of Article 66-4 or item 1 of paragraph 16 of Article 68-88 of the Act on Special Measures Concerning Taxation does not change the amount of corporation tax related to the taxation.

(13) Exemption from Delinquent Tax

Where a grace of tax payment has been granted, the associated delinquent tax for the period that corresponds to the period of the grace of tax payment (where the application for the grace of tax payment was made prior to the due date for the payment of the corporation tax, including the period from the date of the application to the due date for the payment of the corporation tax) shall be exempted. However, where the grace of tax payment is cancelled due to any of the grounds listed in (15), the delinquent tax corresponding to the period from the day following the date on which the cause for the cancellation occurred need not be exempted.

(14) Non-approval of the Grace of Tax Payment

- (a) Where an application for a grace of tax payment does not meet the requirements in (1), the RTB Special Collection Group shall not suspend the payment of the corporation tax related to the application, and shall inform the applicant (including the guarantors and third party mortgagors or pledgers) of that fact, using Form 6-4.
- (b) Where (a) applies, the RTB Special Collection Group shall notify the related RTB divisions and the Office of Mutual Agreement Procedures (via the NTA Collection Division) of that fact.
- (c) Where a related RTB division has received the notification in (b), it shall notify the related NTA divisions (where the related division is the RTB Corporation Taxation Division, it shall inform the Corporation Management Group as well) of that fact.

(15) Cancellation of the Grace of Tax Payment

(a) The RTB Special Collection Group may cancel a grace of tax payment if the person who has been granted the grace of tax payment:

- (i) has withdrawn the request for the mutual agreement procedure;
- (ii) does not cooperate in providing the documents necessary for the mutual agreement procedure;
- (iii) is found unable to pay the corporation tax related to the grace of tax payment in full within the period of the grace of tax payment where any of the facts listed in the items of paragraph 1 of Article 38 [Advance Demand] of the Act on General Rules for National Taxes have arisen;
- (iv) does not follow an order issued by the Regional Commissioner pursuant to paragraph 1 of Article 51 [Change in Security, etc.] of the Act on General Rules for National Taxes regarding the security deposited for the corporation tax related to the grace of tax payment; or
- (v) is found inappropriate to be granted a grace of tax payment because of changes which have arisen in the person's assets or other circumstances.

(Note) Where the Office of Mutual Agreement Procedures, the RTB Large Enterprise Examination Division or the Corporation Management Group has found that there were changes in the assets or other circumstances of a domestic corporation or foreign corporation to which a grace of tax payment was granted, it shall inform the RTB Special Collection Group (where the Office of Mutual Agreement Procedures informs the RTB Special Collection Group, via the NTA Collection Division; where the Corporation Management Group informs the RTB Special Collection Group, via the RTB Corporation Taxation Division) of that fact without delay.

(b) Before the RTB Special Collection Group cancels a grace of tax payment according to (a), it shall, except where (a)(i) or (iii) applies, hear the explanation from the person who has been granted that grace of tax payment in advance. However, this shall not apply where that person gives no explanation without any justifiable reason.

(c) Where the RTB Special Collection Group has canceled a grace of tax payment according to (a), it shall inform the person to whom the grace of tax payment was granted (including the guarantors and third party mortgagors or pledgers) of that fact, using Form 6-5. In this case, the RTB Special Collection Group shall notify the related RTB divisions and the Office of Mutual Agreement Procedures (via the NTA Collection Division) of that fact.

(d) Where a related RTB division has received the notification in (c), it shall notify the related NTA divisions (where the related division is the RTB Corporation Taxation Division, it shall notify the Corporation Management Group as well) of that fact.

(16) Procedures when an Agreement is Reached on the Mutual Agreement Procedure

(a) Where there are two or more mutual agreement procedures related to the corporation tax covered by the grace of tax payment, and a part of them comes to fall under any of the following, the Office of Mutual Agreement Procedures shall inquire of the related NTA divisions the amount of the grace of tax payment related to the other continued mutual agreement procedure:

- (i) Agreement on a mutual agreement procedure in under 19;
- (ii) Termination of a mutual agreement procedure under 20;
- (iii) Withdrawal of the request for the mutual agreement procedure under 21;
- (iv) Agreement on the mutual agreement procedure under 30; or
- (v) Termination of the mutual agreement procedure under 31.

(b) Where a related NTA division has received the inquiry in (a) from the Office of Mutual Agreement Procedures, it shall instruct the RTB Large Enterprise Examination Division or the Corporation Management Group (via the RTB Corporation Taxation Division) to notify the related NTA division (where the Corporation Management Group notifies the related NTA division, via the RTB Corporation Taxation Division) and the RTB Special Collection Group of the amount of the grace of tax payment related to the other continued mutual agreement procedure and shall notify the Office of Mutual Agreement Procedures of the amount of the grace of tax payment related to the notification.

(c) Where the RTB Special Collection Group has received the notification in (b), it shall take measures that are necessary for mutual agreement on a part of two or more mutual agreement procedures, such as the cancellation of a part of the security deposited, and shall inform the person to whom the grace of tax payment was granted for the amount of the grace of tax payment related to the other continued mutual agreement procedure, using Form 6-6. In this case, the RTB Special Collection Group shall inform the related RTB divisions and the Office of Mutual Agreement Procedures (via the NTA Collection Division) of that fact.

(d) Where the related RTB division has received the notification in (c), it shall inform the related NTA divisions (where the related division is the RTB Corporation Taxation Division, it shall notify the Corporation Management Group as well) of that fact.

## 8. Notification to Prefectures in Relation to the Grace of (Local) Tax Collection

(1) The procedures where a domestic corporation requests a mutual agreement procedure in 3 on the grounds that the corporation was subject to transfer pricing taxation in Japan (including where a foreign corporation requests a mutual agreement procedure with the competent authority of the treaty partner on the grounds that the corporation was subject to transfer pricing taxation in Japan, and the Office of Mutual Agreement Procedures has received a proposal for a mutual agreement procedure described in 24 from the competent authority of the treaty partner) are as follows:

(a) Where the Corporation Management Group or the RTB Large Enterprise Examination Division has been notified of a request for a mutual agreement procedure in 9(1) or 24(1) from the related NTA divisions (via the RTB Corporation Taxation Division in the case of the Corporation Management Group), it shall inform the related NTA divisions (via the RTB Corporation Taxation Division in the case of the Corporation Management Group) of the amount of corporation tax covered in the mutual agreement procedure resulted from taxation under item 1 of paragraph 15 of Article 66-4 of the Act on Special Measures Concerning Taxation connected with the notification (of the amount of individually allocated corporation tax related to the consolidated corporation tax amount covered in the mutual agreement procedure resulted from the taxation under item 1 of paragraph 16 of Article 68-88 of the Act on Special Measures Concerning Taxation in the case of a consolidated corporation) and the amount of taxable income on which the corporation tax amount is based (of individual income amount related to the consolidated income amount on which the corporation tax is based resulted from the tax assessment under item 1 of paragraph 16 of Article 68-88 of the Act on Special Measures Concerning Taxation in the case of a consolidated corporation) (hereinafter referred to as “the amount of tax assessment under a request for a mutual agreement procedure” in 8);

(b) Where the related NTA division has received the notification in (a) from the related RTB divisions, it shall inform the Office of Mutual Agreement Procedures of the amount of tax assessment under a request for a mutual agreement procedure:

(Note) It should be noted that where the transfer pricing taxation in Japan has been made on two or more taxable years, the notification of the amount of tax assessment under a request for a mutual agreement procedure will be given for each taxable year.

(c) Where the Office of Mutual Agreement Procedures has received the notification in (b) from the related NTA divisions, it shall inform the Prefectural Resident Tax Division of the prefecture in which office or business premises of the domestic corporation (where the domestic corporation is a consolidated corporation, either the consolidated parent or the subsidiary corporation that is engaged in the transactions subject to the request for the mutual agreement procedure) or foreign corporation (where the foreign corporation has offices or business premises in more than two prefectures, its main office or business premises) is located of the following matters:

- (i) The fact that a request or a proposal for a mutual agreement procedure has been made;
- (ii) The amount of tax assessment under a request for a mutual agreement procedure that made in each taxable year of transfer pricing taxation;
- (iii) The name of the domestic corporation (where the corporation is a consolidated corporation, either the consolidated parent or the subsidiary corporation that is engaged in the transactions subject to the request for the mutual agreement

procedure) or the foreign corporation, the name of its representative and the address of its office or business premises (where the corporation has offices or business premises in more than two prefectures, its main office or business premises);

(iv) The date on which the request or proposal for the mutual agreement procedure was made;

(v) The name of the treaty partner connected with the request for the mutual agreement procedure; and

(vi) Other useful information.

(Note) It should be noted that where a domestic corporation has requested a mutual agreement procedure before transfer pricing taxation is made in Japan the procedures in (a), (b), (c), (d) and (e) shall be conducted after the transfer pricing taxation has been made.

(2) The procedures where an agreement is reached on a mutual agreement procedure in (1) (except for where the agreement does not change the corporation tax related to the mutual agreement procedure) are as follows:

(a) Where the Corporation Management Group or the RTB Large Enterprise Examination Division has received the instructions in 19(3) or 30 (2) from the related NTA division regarding the mutual agreement procedure in (1), it shall inform the related NTA divisions (via the RTB Corporation Taxation Division in the case of the Corporation Management Group) of the amount of corporation tax (the amount of individually allocated corporation tax in connection with the amount of consolidated corporation tax in the case of consolidated corporations) and the amount of taxable income on which the corporation tax amount is based (of the amount of individual income in connection with the amount of consolidated income on which the amount of individually allocated corporation tax is based in the case of a consolidated corporation) resulted from the correction under Article 26 of the Act on General Rules for National Taxes, based on this mutual agreement (hereinafter referred to as “the amount of correction based on the mutual agreement” in 8);

(b) Where the related NTA division has received the notification in (a) from the related RTB division, it shall inform the Office of Mutual Agreement Procedures of the amount of the correction based on the mutual agreement under notification;

(c) Where the Office of Mutual Agreement Procedures has received the notification in (b) from the related NTA divisions, it shall inform the Prefectural Resident Tax Division of the prefecture in which the office or business premises of the domestic corporation (where the domestic corporation is a consolidated corporation, either the consolidated parent or the subsidiary corporation that is engaged in the transactions related to the request for the mutual agreement procedure) or the foreign corporation (where the foreign corporation has offices or business premises in more than two prefectures, the

main office or business premises) is located of the following matters:

- (i) The fact that an agreement in the mutual agreement procedure has been reached;
- (ii) The amount of the correction based on the mutual agreement in each taxable year;
- (iii) The name of the domestic corporation or foreign corporation, the name of its representative and the address of its office or business premises (where the corporation has offices or business premises in more than two prefectures, its main office or business premises);
- (iv) The date on which the agreement in the mutual agreement procedure was reached;
- (v) The name of the treaty partner connected with the request for the mutual agreement procedure; and
- (vi) Other useful information.

(Notes) 1 It should be noted that where an agreement is reached on a part of two or more mutual agreement procedures in (1), except for where the agreement does not change the amount of corporation tax, etc. related to the mutual agreement procedure, the following procedures shall be taken in addition to (a) ,(b) and (c).

2 Where the Corporation Management Group or the RTB Large Enterprise Examination Division has received the instructions in 19(3) or 30(2) regarding the agreement reached on a part of two or more mutual agreement procedures in (1), it shall inform the related NTA divisions (via the RTB Corporation Taxation Division in the case of the Corporation Management Group) of the amount of corporation tax and the taxable income related to the other continued mutual agreement procedures when it informs the related division in (a). These amounts are calculated as the amounts of corrections which would have been made if the mutual agreement procedure on which the agreement was reached has not been requested in (1); hereinafter the same in (2).

3 Where the related NTA division has received the notification in 2 from the related RTB divisions, it shall inform the Office of Mutual Agreement Procedures of the amount of corporation tax and the taxable income related the other continued mutual agreement procedure when it informs the Office of Mutual Agreement Procedures in (b).

4 Where the Office of Mutual Agreement Procedures has received the notification in 3 from the related NTA divisions, it shall inform the Prefectural Resident Tax Division of the amount of corporation tax and the taxable income and the name of the treaty partner connected with the other continued mutual agreement procedures in addition to the items provided for in (i), (ii), (iii), (iv), (v) and (vi).

- (3) Where the agreement reached does not change the amount of corporation tax, etc. related to the mutual agreement procedure in (1) or where the mutual agreement procedure in (1) is terminated, the Office of Mutual Agreement Procedures shall inform the

Prefectural Resident Tax Division of the prefecture in which the office or business premises of the domestic corporation (where the domestic corporation is a consolidated corporation, either the consolidated parent or the subsidiary that is engaged in the transactions related to the request for a mutual agreement procedure) or the foreign corporation (where the foreign corporation has offices or business premises in two or more prefectures, the main office or business premises) is located of the following matters:

- (a) The fact that the agreement reached does not change the amount of corporation tax, etc. related to the request for the mutual agreement procedure or that the mutual agreement procedure in (1) has been terminated;
- (b) The name of the domestic corporation or the foreign corporation, the name of its representative and the address of its office or business premises (where the corporation has offices or business premises in more than two prefectures, its main office or business premises);
- (c) The date of the agreement or the termination of the mutual agreement procedure;
- (d) The name of the treaty partner; and
- (e) Other useful information.

(Notes) 1 It should be noted that where an agreement reached on a part of two or more mutual agreement procedures in (1) does not change the corporation tax related to the mutual agreement procedure or where the mutual agreement procedure is terminated, the following procedures shall be taken in addition to the above.

2 The Office of Mutual Agreement Procedures shall ask the related NTA divisions for confirmation of the amount of corporation tax and the taxable income related to the other continued mutual agreement procedures. These amounts are calculated as the amounts of corrections which would have been made if the mutual agreement procedure in (1)(a) had not been requested; hereinafter the same in (3).

3 Where the related NTA division has been asked for confirmation in 2 from the Office of Mutual Agreement Procedures, it shall instruct the RTB Large Enterprise Examination Division or the Corporation Management Group (via the RTB Corporation Taxation Division) to notify the related NTA division (where the Corporation Management Group notifies the related NTA division, via the RTB Corporation Taxation Division) of the amount of corporation tax and the taxable income related to the other continued mutual agreement procedures, and shall notify the Office of Mutual Agreement Procedures of the amount of corporation tax and the taxable income regarding the notification.

4 Where the Office of Mutual Agreement Procedures has received the notification in 3 from the related NTA divisions, it shall inform the Prefectural Resident Tax Division of the amount of corporation tax and the taxable income related to the other continued mutual agreement procedures and the name of the treaty partner, in addition to the items provided for in (a),(b), (c),(d) and (e).

## 9. Measures for Retaining Tax Returns and Other Documents

- (1) Where the Office of Mutual Agreement Procedures has received an Application for a Mutual Agreement Procedure and attachments in 6(1), it shall notify the related NTA divisions of that fact with a copy of an Application for a Mutual Agreement Procedure, and ask them to take measures to retain tax returns, etc. of the applicant (where the subject of the application is transactions of a consolidated subsidiary, the tax returns, etc. of the applicant and the consolidated subsidiary).
- (2) Where the related NTA division has been asked to take measures to retain tax returns, etc. from the Office of Mutual Agreement Procedures in (1), it shall provide instructions to the related RTB divisions according to 5(5).
- (3) Where the related RTB division has received the instructions in (2) from the related NTA divisions, it shall provide the necessary instructions to the District Director of the Tax Office having jurisdiction over the place of the applicant's tax payment (where the subject of the application is transactions of a consolidated subsidiary, to the District Directors of the Tax Offices having jurisdictions over the places of the applicant's and the consolidated subsidiary's tax payment).

## 10. Review of Items to Be Included in the Application for the Mutual Agreement Procedure

- (1) Where the contents of an Application for a Mutual Agreement Procedure or the attachments have any deficiencies, the Office of Mutual Agreement Procedures shall ask the applicant to correct them.
- (2) The Office of Mutual Agreement Procedures shall request the applicant to submit the documents that are considered necessary for the determination of whether or not the request for the mutual agreement procedure is justified.
- (3) Where the Office of Mutual Agreement Procedures has asked the applicant for correction in (1) or the submission of the documents in (2), it shall record that fact and the status of the subsequent correction or submission of the documents.
- (4) Where a request for a mutual agreement procedure is regarding taxation in Japan, the Office of Mutual Agreement Procedures shall ask the related NTA divisions for a copy of the documents explaining the details of the taxation (if taxes have yet to be assessed, an outline of the relevant facts).

## 11. Submission of Documents

- (1) The Office of Mutual Agreement Procedures will ask the applicant to submit the documents that are considered necessary for the implementation of the mutual agreement procedure.
- (2) Where the Office of Mutual Agreement Procedures has asked the applicant for the submission of documents in (1), it shall record that fact and the status of the subsequent submission of the documents

## 12. Submission of Translated Documents

The Office of Mutual Agreement Procedures will, as necessary, ask the applicant for Japanese translations of attachments or other documents in foreign languages.

## 13. Explanations of Submitted Documents

The Office of Mutual Agreement Procedures will, as necessary, ask the applicant (where the subject of the application is transactions of a consolidated subsidiary, the applicant or the consolidated subsidiary) to provide explanations of attachments or other documents.

## 14. Communicating Changes of Submitted Documents, etc.

(1) The Office of Mutual Agreement Procedures will ask the applicant to contact it without delay in the event that the applicant detects an error or where a significant change has arisen in the contents of the Application for the Mutual Agreement Procedure, attachments or other documents.

(2) The Office of Mutual Agreement Procedures will ask the applicant to contact it without delay to update the status of the tax disposition, administrative appeal, APA review, etc. in the treaty partner.

## 15. Proposal of the Mutual Agreement Procedure to the Competent Authority of the Treaty Partner

(1) Where the Office of Mutual Agreement Procedures considers that a request for a mutual agreement procedure is justified based on the Application for the Mutual Agreement Procedure and attachments in 6(1), it shall, except for the cases below, propose to the competent authority of the treaty partner that a mutual agreement procedure be commenced. The Office of Mutual Agreement Procedures, however, will not propose to commence a mutual agreement procedure where the proposal for the mutual agreement procedure has already been made by the competent authority of the treaty partner in connection with the taxation, APA, etc. which are the subject of the application for the mutual agreement procedure.

(a) Cases in which the applicant has not corrected deficiencies in the contents of its Application for the Mutual Agreement Procedure or attachments, even though it was asked 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 the mutual agreement procedure is for an APA.

(2) Where the Office of Mutual Agreement Procedures will not propose a mutual agreement procedure to the competent authority of the treaty partner, except for the case in the second sentence of (1), it shall notify the applicant of that fact.

(3) Where the Office of Mutual Agreement Procedures has provided a notification to the applicant in (2), it shall inform the related NTA divisions of that fact. (It shall also inform the NTA Collection Division of that fact where the notification is related to the grace of tax payment with regard to corporation tax covered in the mutual agreement procedure.)

(4) Where the related NTA division and the NTA Collection Division have received the notification described in (3) from the Office of Mutual Agreement Procedures, they shall inform the related RTB divisions and the RTB Special Collection Group of that fact.

#### 16. Treatment of Cases Where a Corporation Joins a Consolidated Corporation Group, or Where a Consolidated Corporation Secedes from a Consolidated Corporation Group or Joins Another Consolidated Corporation Group

(1) Where a corporation becomes a consolidated corporation after submitting the Application for the Mutual Agreement Procedure, or where a consolidated corporation engaged in transactions that are the subject of a request for a mutual agreement procedure joins another consolidated corporation group and continues to request a mutual agreement procedure, the Office of Mutual Agreement Procedures shall ask the consolidated parent corporation of the consolidated corporation to submit a Form 5 [Notification of Becoming or Joining a Consolidated Corporation Group, etc. and Continuing a Request for a Mutual Agreement Procedure] to the Office of Mutual Agreement Procedures without delay.

(2) Where a consolidated corporation engaged in transactions that are the subject of a request for a mutual agreement procedure becomes a corporation other than consolidated corporations and continues to request a mutual agreement procedure, the Office of Mutual Agreement Procedures shall ask the corporation to submit a Form 5 [Notification of Seceding from a Consolidated Corporation Group, etc. and Continuing a Request for a Mutual Agreement Procedure] to the Office of Mutual Agreement Procedures without delay.

(Note) Where the Notification prescribed in (1) or (2) has been submitted to a Tax Office in error, the Revenue Management and Processing Group shall send it to the Office of Mutual Agreement Procedures without delay and notify the person who has submitted the notification of that fact.

(3) Where the Office of Mutual Agreement Procedures has received a notification in (1) or (2), it shall notify the related NTA divisions of that fact with a copy of the notification. The Office of Mutual Agreement Procedures will also notify the competent authority of the treaty partner of that fact as necessary.

(4) Where the related NTA division has received the notification in (3), it shall notify the related RTB division of that fact.

(5) The Office of Mutual Agreement Procedures shall treat a corporation that has submitted a Form 5 as having submitted a request for a mutual agreement procedure with the Commissioner of the National Tax Agency, and shall apply this Commissioner's

Directive on the Mutual Agreement Procedure to the corporation for the subsequent procedures.

#### 17. Updating Applicants on the Status of the Mutual Agreement Procedure

The Office of Mutual Agreement Procedures will, upon a request from the applicant (where the subject of the application is the transactions of a consolidated subsidiary, the applicant or the consolidated subsidiary; hereinafter the same in 17) or when otherwise necessary, update the applicant on the status of the mutual agreement procedure to the extent that it does not interfere with the mutual agreement procedure.

#### 18. Confirmation of the 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, the Office of Mutual Agreement Procedures shall inform the applicant of the contents of the proposed agreement in writing, and ask 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 after confirming that the applicant accepts the contents of the proposed agreement.

#### 19. Notification of the Mutual Agreement

(1) Where a mutual agreement has been reached on a mutual agreement procedure, the Office of Mutual Agreement Procedures shall notify the applicant of the date and contents of the agreement, using Form 2 (Notification That a Mutual Agreement Has Been Reached.).

(2) Where the Office of Mutual Agreement Procedures has provided the applicant with the notification in (1), it shall notify the related NTA divisions of that fact with a copy of the notification. (It shall also notify the NTA Collection Division of that fact where the notification is related to the grace of tax payment with regard to corporation tax covered in the mutual agreement procedure.)

(3) Where the related NTA division and the NTA Collection Division have received the notification in (2) from the Office of Mutual Agreement Procedures, they shall instruct the related RTB divisions and the RTB Special Collection Group to take measures for implementing the mutual agreement and to take measures related to the grace of tax payment in accordance with the applicable tax treaty and relevant laws and directives.

(4) Where a related RTB division has received the instructions in (3) from the related NTA division, it shall give the instructions necessary for implementing the mutual agreement to the District Director of the Tax Office having jurisdiction over the place of the applicant's tax payment.

## 20. Termination of the Mutual Agreement Procedure

(1) The Office of Mutual Agreement Procedures shall propose to the competent authority of the treaty partner that a mutual agreement procedure be terminated where:

- (a) after the mutual agreement procedure began, it has been determined that the subject of the request for the mutual agreement procedure is not a subject to be discussed in a mutual agreement procedure under the applicable tax treaty;
- (b) the applicant who requested a mutual agreement procedure for an APA has withdrawn the request for the APA;
- (c) false statements, etc. have been found in the Application for the Mutual Agreement Procedure or the attachments;
- (d) the applicant does not cooperate in providing the documents necessary for the mutual agreement procedure;
- (e) it is not possible to gather the documents necessary for a mutual agreement procedure because a significant amount of time has elapsed since the taxation in Japan or in the treaty partner, or due to other reasons;
- (f) the applicant does not accept the proposed agreement in 18 (1); or
- (g) it is recognized that the continuation of the mutual agreement procedure will not result in an appropriate solution.

(2) Where the competent authority of the treaty partner has accepted the proposal from the Office of Mutual Agreement Procedures in (1), or the Office of Mutual Agreement Procedures has accepted a proposal from the competent authority of the treaty partner to terminate a mutual agreement procedure, the Office of Mutual Agreement Procedures shall notify the applicant that the mutual agreement procedure has been terminated, using Form 3 (Notification That a Mutual Agreement Procedure Have Been Terminated).

(3) Where the Office of Mutual Agreement Procedures has provided the notification in (2), it shall notify the related NTA divisions of that fact. (It shall also notify the NTA Collection Division of that fact where the notification is related to the grace of tax payment with regard to corporation tax covered in the mutual agreement procedure.)

(4) Where the NTA Collection Division has received the notification in (3) from the Office of Mutual Agreement Procedures, it shall instruct the RTB Special Collection Group to take measures related to the grace of tax payment in accordance with relevant laws and directives.

## 21. Withdrawal of a Request for the Mutual Agreement Procedure

(1) After requesting a mutual agreement procedure, the applicant can withdraw the request for a mutual agreement procedure any time before receiving the notification in 15(2) [Notification That a Mutual Agreement Procedure Will not be Proposed], 19(1) [Notification That a Mutual Agreement Has been Reached] or 20(2)[Notification That

Mutual Agreement Procedure Have been Terminated].

(2) The withdrawal of a request for mutual agreement procedure will be made by submitting Form 4 [Notification of the Withdrawal of a Request for a Mutual Agreement Procedure] to the Office of Mutual Agreement Procedures.

(Note) Where the Notification of the Withdrawal of a Request for a Mutual Agreement Procedure has been submitted to the Tax Office in error, the Revenue Management and Processing Group shall send it to the Office of Mutual Agreement Procedures without delay and notify the person who has submitted the notification of that fact.

(3) Where the Office of Mutual Agreement Procedures has received a Notification of the Withdrawal of a Request for a Mutual Agreement Procedure in (2), it shall notify the competent authority of the treaty partner that the mutual agreement procedure is being terminated because the applicant withdrew the request for the mutual agreement procedure. The Office of Mutual Agreement Procedures shall notify the related NTA divisions that the request for the mutual agreement procedure has been withdrawn with a copy of the Notification of the Withdrawal of the Request for a Mutual Agreement Procedure. It shall also notify the NTA Collection Division of that fact with a copy of the Notification of the Withdrawal of the Request for a Mutual Agreement Procedure where the notification is related to the grace of tax payment with regard to corporation tax covered in the mutual agreement procedure.

(4) Where the NTA Collection Division has received the notification in (3) from the Office of Mutual Agreement Procedures, it shall inform the RTB Special Collection Group of that fact with a copy of the Notification of the Withdrawal of the Request for a Mutual Agreement Procedure.

## 22. Cancellation of Document Retention Measures

(1) Where after the Office of Mutual Agreement Procedures has asked the related NTA divisions to take measures to retain tax returns, etc. in 5 (3) or 9(1), the request for a mutual agreement procedure has not been made, the mutual agreement procedure has not been proposed to the competent authority of the treaty partner, the mutual agreement procedure has resulted in a mutual agreement, the mutual agreement procedure has been terminated without reaching a mutual agreement, or the request for the mutual agreement procedure has been withdrawn, the Office of Mutual Agreement Procedures shall notify the related NTA divisions that the retention measures have become unnecessary.

(2) Where a related NTA division has received the notification in (1) from the Office of Mutual Agreement Procedures, it shall instruct the related RTB divisions to cancel the document retention measures.

(3) Where the related RTB division has received the instructions in (2) from the related NTA divisions, it shall provide the necessary instructions to the District Director of the Tax Office having jurisdiction over the place of applicant's tax payment (where the subject of the

application is the transactions of a consolidated subsidiary, to both of the District Directors of the Tax Offices having jurisdiction over the places of the applicant's and the consolidated subsidiary's tax payment.).

### Chapter 3: Mutual Agreement Procedure Proposed by the Competent Authority of the Treaty Partner

#### 23. Pre-filing Consultation

The Office of Mutual Agreement Procedures will accede to the request for a pre-filing consultation, including a consultation on an anonymous basis through an agent, prior to the applicant's request for a mutual agreement procedure to the competent authority of a treaty partner regarding taxation in Japan. The subsequent procedures shall be conducted in accordance with those provided for in 5.

#### 24. Procedures Applied to the Proposal for the Mutual Agreement Procedure

(1) Where the Office of Mutual Agreement Procedures has received a proposal for a mutual agreement procedure in accordance with an applicable tax treaty from the competent authority of a treaty partner, it shall notify the related NTA divisions of the following items and ask them to take measures to retain tax returns, etc., except for cases that fall under 25, 26 or 27:

- (a) The name of the treaty partner that has made the proposal;
- (b) The date on which the proposal was received;
- (c) Where the proposal is regarding taxation on a non-resident or a foreign corporation in Japan (except for cases that fall under (f)), the name and address of the non-resident or the name and address of the head office or main office of the foreign corporation, the time period or taxable years to be covered by the mutual agreement procedure, the date of the tax assessment, and the name and address of the tax representative in Japan if one has been specified;
- (d) Where the proposal is regarding taxation in Japan on the permanent establishment of a non-resident or a foreign corporation located in Japan, in addition to the items provided for in (c), the name and address of the permanent establishment;
- (e) Where the proposal is regarding transfer pricing taxation on transactions conducted by a permanent establishment of a non-resident or a foreign corporation located in Japan, in addition to the items provided for in (c) and (d), the name and address of the other party to the transactions;
- (f) Where the proposal is regarding a tax withheld by a withholding agent in Japan, the name and address of the withholding agent, the name and address of the non-resident or the name and address of the head office or main office of the foreign corporation

that received the payment from which the tax was withheld, the character of the payment, the time period to be covered by the mutual agreement procedure, etc.;

(g) 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 the mutual agreement procedure, etc.; and

(h) Other useful information.

(Note) It should be noted that where cases fall under (c), (d), (e) or (f), a request for a mutual agreement procedure cannot be made in Japan, and the mutual agreement procedure begins with a proposal from the competent authority of a treaty partner. In cases that fall under (g), the individual may not request a mutual agreement procedure in Japan.

(2) Where a related NTA division has received the request from the Office of Mutual Agreement Procedures to take measures to retain tax returns, etc. as described in (1), it shall instruct the related RTB divisions not to dispose of the tax returns, etc. as prescribed in 5(5), even if the document retention periods have been exceeded.

(3) Where the related RTB division has received the instruction described in (2) from the related NTA divisions, it shall provide the necessary instructions to the District Director of the Tax Office in charge.

## 25. Procedures Applied to the Proposal for the Mutual Agreement Procedure in Connection with Transfer Pricing

(1) Where a proposal for mutual agreement procedure in accordance with the applicable tax treaty from the competent authority of a treaty partner is regarding transfer pricing taxation in relation to transactions conducted by a domestic corporation, and the result of the mutual agreement procedure for the taxation may affect the taxable profit of the domestic corporation, the Office of Mutual Agreement Procedures shall confirm whether or not the domestic corporation has requested a mutual agreement procedure 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, a mutual agreement procedure, the procedures provided for 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 a mutual agreement procedure, the procedures provided for in 31 shall be followed.

## 26. Procedures Applied to the Proposal for the Mutual Agreement Procedure in Connection with the APA (Domestic Corporations)

(1) Where a proposal for a mutual agreement procedure from the competent authority of a treaty partner is regarding an APA on transactions conducted by a domestic corporation,

the Office of Mutual Agreement Procedures shall confirm whether or not the domestic corporation has requested a mutual agreement procedure in accordance with the provisions of this directive, and 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 a mutual agreement procedure and an APA, the procedures provided for 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 either a mutual agreement procedure or an APA, or neither of them, the procedures provided for in 31 shall be followed.

#### 27. Procedures Applied to the Proposal for the Mutual Agreement Procedure in Connection with the APA (Foreign Corporations)

(1) Where a proposal for a mutual agreement procedure in accordance with the applicable tax treaty from the competent authority of a treaty partner is regarding an APA on transactions conducted by the permanent establishment of a foreign corporation located in Japan, 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 foreign corporation has requested, or will request, an APA, the Office of Mutual Agreement Procedures shall notify the related NTA divisions of the items provided for in 24 (1)(a) and (b) and the name and address of the permanent establishment, and ask them to take measures to retain tax returns, etc. The subsequent procedures shall be conducted in accordance with those provided for in 24(2) and (3), and in 29, 30, 31 and 32.

(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 provided for in 31 shall be followed.

#### 28. Notification to Withholding Agents after Receiving the Proposal for the Mutual Agreement Procedure in Connection with Withholding Income Taxes

Where a proposal for a mutual agreement procedure in accordance with the applicable tax treaty from the competent authority of a treaty partner is regarding a tax withheld by a withholding agent in Japan, the Office of Mutual Agreement Procedures shall notify the withholding agent of the fact that the proposal for a mutual agreement procedure has been made by the competent authority of the treaty partner.

29. Submission of Documents, etc.

- (1) The Office of Mutual Agreement Procedures will, as necessary, ask a person who was subject to taxation that has resulted in a mutual agreement procedure to submit documents and to provide explanations for the documents. Where a person who was subject to taxation that has resulted in a mutual agreement procedure and has been granted the grace of tax payment will not submit documents considered necessary for the mutual agreement procedure, the Office of Mutual Agreement Procedures shall inform the RTB Special Collection Group via the NTA Collection Division that it is considered reasonable to cancel the grace of tax payment if the actions of the person falls under 7 (15)(a)(ii).
- (2) Where the Office of Mutual Agreement Procedures has asked for the submission of documents prescribed in (1), it shall record that fact and the status of the subsequent submission of documents.
- (3) The Office of Mutual Agreement Procedures will, as necessary, ask for Japanese translations to be attached for documents submitted in (1) in a foreign language.
- (4) Where the proposal for mutual agreement procedure is regarding taxation in Japan, the Office of Mutual Agreement Procedures shall ask the related NTA divisions for copies of documents explaining the details of taxation (if taxes have yet to be assessed, an outline of the relevant facts).

30. Notification of the Mutual Agreement

- (1) Where a mutual agreement has been reached as a result of a mutual agreement procedure, the Office of Mutual Agreement Procedures shall notify the related NTA divisions of the date and contents of the agreement. (It shall also inform the NTA Collection Division of the date and contents of the agreement where the notification is related to the grace of tax payment with regard to corporation tax covered in the mutual agreement procedure.)
- (2) Where the related NTA division and the NTA Collection Division have received the notification described in (1) from the Office of Mutual Agreement Procedures, they shall instruct the related RTB divisions and the RTB Special Collection Group to take measures for implementing the mutual agreement and measures related to the grace of tax payment, in accordance with the applicable tax treaty and relevant laws and regulations.
- (3) Where a related RTB division has received the instructions described in (2) from related NTA divisions, it shall give the instructions necessary for taking measures for implementing the mutual agreement to the District Director of the Tax Office in charge over the place of applicant's tax payment.
- (4) Where a mutual agreement has been reached on a mutual agreement procedure regarding the tax withheld by a withholding agent in Japan, the Office of Mutual Agreement Procedures will explain the contents of the agreement to the withholding agent.
- (5) With regard to the procedures for refunding, all or a part of the income tax withheld

by a withholding agent in Japan in accordance with a mutual agreement in a mutual agreement procedure, where the income tax was voluntarily withheld by the withholding agent, a refund shall be given, in principle, based on the Request for a Refund of Overpaid Withholding Income Taxes submitted by the withholding agent. In this case, the Office of Mutual Agreement Procedures shall request the withholding agent to submit a Request for a Refund of Overpaid Withholding Income Taxes. Where the tax was withheld on receipt of notification of the withholding income tax, the refund shall be made to the withholding agent without requesting a Request for a Refund of Overpaid Withholding Income Taxes to the withholding agent.

### 31. Termination of the Mutual Agreement Procedure

- (1) The Office of Mutual Agreement Procedures shall propose to the competent authority of the treaty partner that a mutual agreement procedure be terminated where:
  - (a) it has been determined that the subject of the proposal for the mutual agreement procedure is not the subject to be discussed in the mutual agreement procedure under the applicable tax treaty;
  - (b) it has been confirmed as a result of the action described in 25(1) that the domestic corporation (in cases of a consolidated subsidiary, its consolidated parent corporation) will not request a mutual agreement procedure;
  - (c) it has been confirmed as a result of the action described in 26(1) that the domestic corporation (in cases of a consolidated subsidiary, its consolidated parent corporation) will not request either a mutual agreement procedure or an APA, or that it will request neither of them;
  - (d) it has been confirmed as a result of the action described in 27(1) that the permanent establishment of the foreign corporation will not request an APA.
  - (e) the person who was subject to the tax assessment that has resulted in the mutual agreement procedure does not cooperate in providing the documents necessary for the mutual agreement procedure;
  - (f) it is impossible to gather the documents necessary for a mutual agreement procedure because a significant amount of time has elapsed since the assessment of taxes in Japan or in the treaty partner, or due to other reasons; or
  - (g) it is recognized that the continuation of the mutual agreement procedure will not result in an appropriate solution.
- (2) Where the competent authority of the treaty partner has accepted a proposal from the Office of Mutual Agreement Procedures described in (1), or where the Office of Mutual Agreement Procedures has accepted a proposal from the competent authority of a treaty partner to terminate a mutual agreement procedure, the Office of Mutual Agreement Procedures shall notify the related NTA divisions that the mutual agreement procedure has been terminated. (It shall also inform the NTA Collection Division of that fact where the

notification is related to the grace of tax payment with regard to corporation tax covered in the mutual agreement procedure.)

(3) Where the NTA Collection Division has received the notification described in (2) from the Office of Mutual Agreement Procedures, it shall instruct the RTB Special Collection Group to take measures related to the grace of tax payment, in accordance with relevant laws and regulations.

(4) Where a mutual agreement procedure connected to tax withheld by a withholding agent in Japan has been terminated, the Office of Mutual Agreement Procedures shall notify the withholding agent that the mutual agreement procedure has been terminated.

### 32. Cancellation of Document Retention Measures

(1) After the Office of Mutual Agreement Procedures has asked the related NTA divisions to take measures to retain tax returns, etc. as described in 24(1), it shall notify the related NTA divisions that the retention measures are no longer necessary where a mutual agreement has been reached, or where a mutual agreement procedure has been terminated without reaching a mutual agreement.

(2) Where a related NTA division has received the notification described in (1) from the Office of Mutual Agreement Procedures, it shall instruct the related RTB divisions to cancel the document retention measures.

(3) Where a related RTB division has received the instructions described in (2) from a related NTA division, it shall provide the necessary instructions to the District Director of the Tax Office in charge.

## Chapter 4: The Proposal for the Mutual Agreement Procedure Without a Request by Residents or Domestic Corporations, etc.

### 33. Proposal for Mutual Agreement Procedure Not Based on a Request by Residents or Domestic Corporations, etc.

When necessary, the Office of Mutual Agreement Procedures will propose a mutual agreement procedure to the competent authority of a treaty partner without receiving an Application for a Mutual Agreement Procedure prescribed in 6 of Chapter 2.

(Notes) The following are examples of cases in which a proposal for a mutual agreement procedure may be made to the competent authority of a treaty partner without a request from residents or domestic corporation, etc.

(a) In order to revoke a previously reached mutual agreement with a competent authority of a treaty partner because the mutual agreement was based on the documents submitted by an applicant that contain false information, or due to other reasons.

(b) In order to re-negotiate the previously reached mutual agreement on APA with a

competent authority of a treaty partner because a critical assumption included in the mutual agreement has not been met.

- (c) In order to cancel a previously reached mutual agreement on an APA with a competent authority of a treaty partner because a reason for cancellation specified in 5-21 of the Commissioner's Directive on the Operation of Transfer Pricing or in 5-21 of the Commissioner's Directive on the Operation of Transfer Pricing for Consolidated Corporations has arisen.

#### 34. Measures for Retaining Tax Returns and Other Documentation

- (1) Where the Office of Mutual Agreement Procedures has made a proposal described in 33, it shall notify the related NTA divisions of that fact with an outline of its request, and shall ask them to take measures to retain tax returns, etc.
- (2) Where a related NTA division has been asked to take measures to retain tax returns, etc. by the Office of Mutual Agreement Procedures as described in (1), it shall provide instructions to the related RTB divisions as provided in 5(5).
- (3) Where a related RTB division has received the instructions described in (2) from the related NTA division, it shall provide the necessary instructions to the District Director of the Tax Office in charge of the resident, domestic corporation, etc. concerned with the proposal for a mutual agreement procedure (where the proposal is regarding a consolidated subsidiary, the consolidated subsidiary and its consolidated parent corporation).
- (4) The procedures provided for in 29, 30, 31 and 32 shall apply, mutatis mutandis, to a mutual agreement procedure initiated in accordance with 33.

#### 35. Notification That Mutual Agreement Procedure Have Been Proposed, etc.

- (1) Where the Office of Mutual Agreement Procedures has made a proposal described in 33, it shall notify the resident, domestic corporation, etc. subject to taxation that has resulted in a mutual agreement procedure (where the domestic corporation which has engaged in the transactions subject to the taxation is a consolidated subsidiary, its consolidated parent corporation; hereinafter the same in 35) of following items:
  - (a) The date of the proposal;
  - (b) The name of the treaty partner to which the proposal was made;
  - (c) The contents of the proposal;
  - (d) The reason for the proposal; and
  - (e) Other useful information.
- (2) Where a mutual agreement has been reached on a mutual agreement procedure, the Office of Mutual Agreement Procedures shall notify the resident or domestic corporation referred to in (1) of the contents of the agreement.
- (3) Where a mutual agreement procedure has been terminated without reaching a

mutual agreement, the Office of Mutual Agreement Procedures shall notify the resident or domestic corporations referred to in (1) of that fact.

## Chapter 5: Arbitration

### 36. Arbitration Procedure

The Office of Mutual Agreement Procedures shall deal with the arbitration procedure in accordance with the applicable tax treaty, Ministerial Ordinance (Income Tax Treaty) and implementing arrangement regarding arbitration procedure.

### 37. Procedures Where the Mutual Agreement Procedure Based on a Tax Treaty That Contains a Provision for Arbitration Procedure Has Been Requested

Where a mutual agreement procedure based on the tax treaty that contains a provision for arbitration procedure has been requested, the Office of Mutual Agreement Procedures shall follow, in addition to the procedures provided for in Chapter 2 of this directive, the procedures below.

(1) Where the Office of Mutual Agreement Procedures has received the Application for the Mutual Agreement Procedure as described in 6(1), it shall promptly inform the competent authority of the treaty partner that it has received the request for a mutual agreement procedure.

(2) The Office of Mutual Agreement Procedures shall ask the competent authority of the treaty partner to present the documentation it finds to be necessary for determining whether the request is justified, except where the request for the mutual agreement procedure is regarding a tax assessment in Japan.

(3) The Office of Mutual Agreement Procedures shall confirm the starting date of the mutual agreement procedure with the competent authority of the treaty partner and notify the applicant of the starting date of the mutual agreement procedure, in accordance with the applicable implementing arrangement regarding an arbitration procedure.

(Note) It should be noted that the starting date of a mutual agreement procedure is the date on which the Office of Mutual Agreement Procedures has presented a case to the competent authority of a treaty partner, and a case will be considered to have been presented only if the specific information provided for in the implementing arrangement for the arbitration procedure has been presented.

### 38. Procedures Where the Mutual Agreement Procedure Based on the Tax Treaty That Contains a Provision for the Arbitration Procedure Has Been Proposed

Where a mutual agreement procedure based on a tax treaty that contains a provision for the arbitration procedure has been proposed, the Office of Mutual Agreement Procedures

shall follow, in addition to the procedures provided for in Chapter 3 of this directive, the procedures below.

(1) The Office of Mutual Agreement Procedures shall ask the competent authority of the treaty partner to present the documentation it finds to be necessary for determining whether the proposal is justified, except where the proposal for the mutual agreement procedure is regarding a tax assessment in Japan.

(2) The Office of Mutual Agreement Procedures shall confirm the starting date of the mutual agreement procedure with the competent authority of the treaty partner, in accordance with the applicable implementing arrangement for the arbitration procedure.

(Note) It should be noted that the starting date of a mutual agreement procedure is the date on which a case has been presented to the Office of Mutual Agreement Procedures by the competent authority of a treaty partner, and the case will be considered to have been presented only if the specific information provided for in the implementing arrangement for the arbitration procedure has been presented.

#### 39. Requests for Arbitration Procedure

Requests for arbitration procedure can be made in accordance with paragraph 3 or 4 of Article 12 of the Ministerial Ordinance (Income Tax Treaty) pursuant to the provisions of applicable tax treaty.

#### 40. Pre-filing Consultation

The Office of Mutual Agreement Procedures will accede to a request for a pre-filing consultation prior to requesting an arbitration procedure, including a consultation on an anonymous basis through an agent.

#### 41. Procedures for Requesting the Arbitration Procedure

(1) Requests for an arbitration procedure shall be made by submitting the Application for the Arbitration Procedure (Form 7) to the Office of Mutual Agreement Procedures.

(Notes) 1 Where the Application for the Arbitration Procedure has been submitted to a Tax Office in error, the Revenue Management and Processing Group shall send it to the Office of Mutual Agreement Procedures and notify the applicant of that fact.

2 It should be noted that a request for an arbitration procedure can only be made if a mutual agreement has not been reached within the period of time prescribed in the applicable tax treaty from the starting date of the mutual agreement procedure in 37(3).

(2) The Office of Mutual Agreement Procedures shall send a copy of the request and the attached documents to the competent authority of a treaty partner within 10 days from the day following the date of receipt of the Application for the Arbitration Procedure.

(3) Where a Notification of Becoming or Joining a Consolidated Corporation Group, etc. and Continuing a Request for a Mutual Agreement Procedure in 16(1) or a Notification of

Seceding from a Consolidated Corporation Group, etc. and Continuing a Request for a Mutual Agreement Procedure in 16(2) has been submitted, the request for the arbitration procedure shall be treated as continued as well as the request for mutual agreement procedure therewith.

42. Notification to the Person Who Made the Request for the Arbitration Procedure, etc.

(1) The Office of Mutual Agreement Procedures shall notify the residents or domestic corporations that are the persons directly affected by the case (meaning the persons whose taxable profits in Japan or in the treaty partner may be directly affected by the mutual agreement; hereinafter the same in 42) of the matters set forth in the following.

(a) Where unresolved issues to be submitted to arbitration have been decided, the unresolved issues to be submitted to the arbitration;

(b) Where the period of an arbitration procedure has been extended, the reason for the extension and the extended period of the arbitration procedure;

(Notes) The following are examples of instances in which the period of an arbitration procedure can be extended.

(a) Where the failure to resolve an issue within the period referred to in the tax treaty is mainly attributable to the failure of the person directly affected by the case to provide relevant information in a timely manner, and the appointment of arbitrators is postponed for a period of time corresponding to the delay in providing that information.

(b) Where the applicant requests that a mutual agreement procedure be suspended for the reasons such as the applicant giving a priority to an administrative appeal or litigation, and the appointment of arbitrators is postponed for a period of time corresponding to the suspended period.

(c) Where the competent authority of Japan, the competent authority of the treaty partner and the person directly affected by the case agree to extend the period of the arbitration procedure.

(c) Where the arbitration procedure has been terminated before an arbitration decision is provided, the reasons for the termination.

(Notes) The following are examples of instances in which the arbitration procedure can be terminated before an arbitration decision is provided.

(a) Where a mutual agreement has been reached on a mutual agreement procedure.

(b) Where a decision on the unresolved issues submitted to arbitration has been rendered by a court or administrative tribunal in Japan or in equivalent in the treaty partner.

(2) Where the Office of Mutual Agreement Procedures has received a notification from the competent authority of a treaty partner that a request for an arbitration procedure was made in the treaty partner, it shall notify a resident or a domestic corporation that is the

person directly affected by the case of that fact and the date of the receipt, in addition to matters prescribed in (1).

(3) The procedures provided for in (1) shall apply, mutatis mutandis, to a non-resident who has made a request for an arbitration procedure in accordance with paragraph 4 of Article 12 of the Ministerial Ordinance (Income Tax Treaty).

#### 43. Procedures for the Mutual Agreement to Implement the Arbitration Decision

The procedures provided for in 18 and 19 or 30 shall be followed for a mutual agreement to implement the arbitration decision.

#### 44. Withdrawal of the Request for the Arbitration Procedure

(1) After requesting an arbitration procedure, the applicant can withdraw the request for the arbitration procedure any time before receiving the notification described in 19 (1) [Notification of a Mutual Agreement]

(2) Withdrawal of a request for an arbitration procedure shall be made by submitting a Notification of the Withdrawal of a Request for Arbitration Procedure (Form 8) to the Office of Mutual Agreement Procedures.

(Note) Where the Notification of the Withdrawal of a Request for an Arbitration Procedure has been submitted to a Tax Office in error, the Revenue Management and Processing Group shall send it to the Office of Mutual Agreement Procedures and notify the applicant of that fact.

(3) It should be noted that where the person who made a request for an arbitration procedure withdraw the request for the mutual agreement procedure as well as the request for the arbitration procedure, it is sufficient that the person submits a Notification of the Withdrawal of a Request for a Mutual Agreement Procedure, and a Notification of the Withdrawal of a Request for Arbitration Procedure need not be submitted.

(4) Where the Office of Mutual Agreement Procedures has received a Notification of the Withdrawal of the Request for the Arbitration Procedure in (2), it shall notify the competent authority of the treaty partner that the arbitration procedure has been terminated due to the withdrawal of the request for an arbitration procedure.