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Summary of TK Scheme

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Information of this publication are based on laws and regulations as of August 2014.

What is GK-TK Scheme?

GK-TK Scheme

GK-TK scheme is composed of combination of GK（a company based on Companies Act）and TK(an agreement based on Commercial Code)

GK (Godo Kaisha= A limited liability company)

GK is a company established as a vehicle of TK. Based on Companies Act,the process of incorporation of GK is relatively easy. GK becomes an operator of business pursuant to

TK contract and distributes its profit from the business.

TK (Tokumei Kumiai= A Silent Partnership)

TK is a type of enterprise association. A silent partner makes a contribution pursuant to a silent partnership (Tokumei Kumiai) contract with a person who operate a business, to receive distribution of profits. (Art .535 of Commercial Code)

Restraints of GK-TK Scheme

The means of acquisition and possession of real estate

GK should acquire and hold asset as a trust beneficiary right. Otherwise, the flexibility of this scheme would be lost because of regulation based on the Real Estate Specified Joint Enterprise Act .

No Limitation of contribution refund

It doesn’t need to perform legal procedures at making a contribution refund.

Replacement and Purchase of assets

GK can purchase additional assets and replace assets freely as needed.

Tax Advantage (GK-TK scheme)

As a conduit

Income taxation for a TK operator

The gain or loss which should be distributed to TK investors isn't deemed as taxable income of GK as a TK operator. (Corporation Tax Law Basic Interpretive Regulation 14-1-3)

Tax of trust beneficiary right

There is no preferential treatment of the reduction of tax for GK at transaction of real estate. GK would acquire and hold asset only as a trust beneficiary right,

i)Real estate acquisition tax isn't imposed.

ii)The amount of registration and license tax is relatively inexpensive.

Taxation (GK-TK)

■Taxation for distribution of profit from TK

for foreign investors having no PEs

20% withholding tax is imposed※1.

※1 With the addition of special income tax for reconstruction, the rate is changed to 20.42% from Jan 1, 2013 to Dec 31,2037.

Taxation (GK-TK)

■Taxation for loan interests for foreign investors having no PEs

20% withholding tax is imposed. ※1 ※2

※1 With the addition of special income tax for reconstruction, the rate is changed to 20.42% from Jan 1, 2013 to Dec 31,2037.

※2 There are some cases where investors can enjoy tax break if their country of residence has a tax treaty with Japan.

Taxation (GK-TK)

■Taxation for capital gains of contribution of TK

for foreign investors having no PEs

Exclusion from Taxation ※1

※1 Because the income doesn't fall under domestic source income prescribed as taxable income in Art.141(4) of Japanese Corporation Tax Law or prescribed which is required to withhold tax in Art. 212 of Japanese Income Tax Law.

Taxation (Entities in Japan including KK, Japan Branch etc.)

■Limitation of deduction about interests for foreign investors.

Even though Interests are deductible expenses, if it falls under any of the following cases, a certain amount couldn't be deducted. In the case that it falls under both of them, the greater amount is applicable.

ｉ）Thin capitalization rules ／Art. 66-5 of Act on Special Measures concerning Taxation

If a corporation owes liabilities to a foreign shareholder who holds 50% or more of its shares and the amount of liabilities exceed three times the amount of equity (The amount is calculated pursuant to the specified method.), the amount of interest corresponding such excess liability isn't deducted from the taxable income.

ii）Japanese Earnings Stripping Rules／Art. 66-5-2 of Act on Special Measures concerning Taxation

If a corporation owes liabilities to a foreign shareholder who holds 50% or more of the shares and the amount of interest expenses exceeds the amount of 50% of taxable income before deduction of the interest expenses, the amount of such excess isn't deducted from the taxable income.

The amount which isn't deducted can be carried over for seven years.