



## Summary of TMK Scheme

---

### Sakura Horwath & Co.

This publication contains information in summary form and is therefore intended for general guidance only. It is not intended to be a substitute for detailed research or the exercise of professional judgment. Sakura Horwath & Co. can't accept any responsibility for loss occasioned to any person acting or refraining from action as a result of any material in this publication. On any specific matter, reference should be made to the appropriate adviser.

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

# What is TMK?

---

## ■ TMK (Tokutei Mokuteki Kaisha=Specific Purpose Company)

TMK is a company established for an special purpose based on Act on Securitization of Assets which was enacted for appropriate securitization of asset and protection of investors and creditors.

## ■ Members of TMK

### i ) Specified Equity Members

With no restriction on exercise of voting rights.

### ii ) Preferred Equity Members

Instead of some restriction on exercise of voting rights, they are guaranteed priority in the payment of dividends.

\*A member's liability shall be limited to the amount of the subscription price of the Specified Equity or Preferred Equity he/she holds. (Art. 27 of the “Asset Securitization Act”)

## Restraints of TMK

---

### ■ Notification

TMK shall notify Asset Securitization Plan (including the certain change of plan) to the prime minister (via Local Finance Bureaus), and conduct business in accordance with it.

### ■ Regulations of contribution refund

It takes over a month for the procedure of the protection of creditors to make a contribution refund.

### ■ Prohibition on purchase of additional assets

TMK can purchase additional assets only as trust beneficiary right.

## Tax Advantage (TMK)

---

### ■ As a conduit

The amount of dividends can be deducted from the taxable income of TMK in case TMK meets certain requirements. (Art.67-14 of special taxation measures law)

#### **\*The main conditions (summary)**

1. Specified bond is planned to be held by Qualified Institutional Investors.
2. More than 50% of preferred shares are offered in Japan.
3. More than 50% of specified shares are offered in Japan. (except specified shares which waive rights to receive a distribution of profits or residual assets)
4. More than 90% of net income for the year are paid to shareholders as dividends. (There are some adjustments for the calculation of the net income.)

### ■ Tax incentive for TMK

TMK can receive preferential treatment of the reduction tax in case certain requirements are met as follows.

- The license registration tax
- The real estate acquisition tax

## Taxation (TMK)

---

### ■ Taxation for dividends for foreign investors having no PEs

The rate of withholding tax for dividends which a Preferred Equity Member receives is

**20%** . ※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 (TMK)

---

### ■ 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 (TMK)

---

### ■ Taxation for bond 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 (TMK)

---

■ **taxation for capital gain of preferred equity** for foreign investors having no PEs  
Filing a tax return and **25.5%** ※<sup>1</sup> corporate tax payment are required ※<sup>2</sup>.

※<sup>1</sup> For two years starting from fiscal 2012, the additional tax of 10% will be imposed as special corporate tax for reconstruction, so the actual tax rates will be **28.05%** during this period.

※<sup>2</sup> It is why the above income falls under the income arising from the transfer of shares, etc. of a domestic corporation by a foreign corporation which is a specially-related shareholder, etc. of the domestic corporation (Art. 187(1)(iii) of Corporation Tax Law Enforcement Order) or the income arising from the transfer of shares (including capital contributions) (Art. 187(1)(iii) of Corporation Tax Law Enforcement Order)

## 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.