

## What to do if there's a dispute over tax?

Let's learn from the latest tribunal case  
where a taxpayer won and think together!



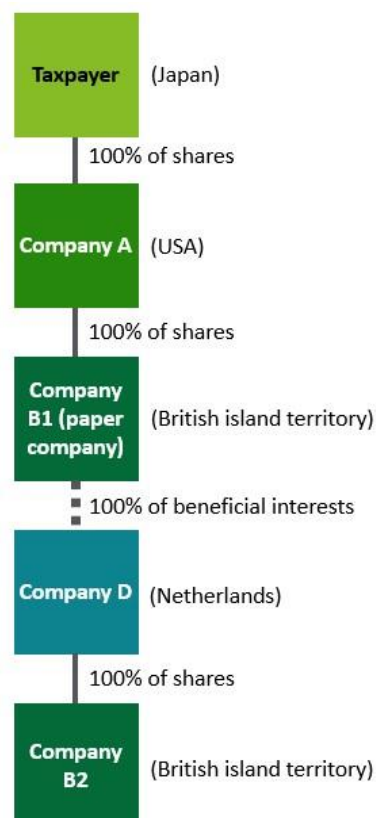
### Weak on Foreign Matters?

#### Executive Summary

- It is challenging for taxpayers to accurately grasp foreign laws and facts, but it seems that the tax authorities are struggling even more than taxpayers.
- We will explain a tax dispute based on the National Tax Tribunal Decision on 14 March 2024.

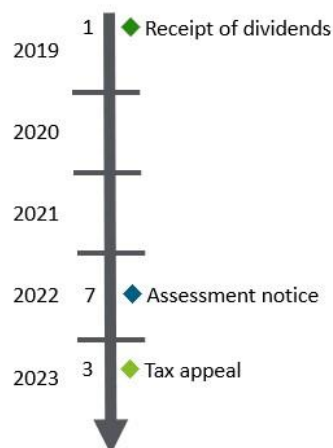
#### 1. Transaction conducted by the Taxpayer

- The taxpayer in this case (the "Taxpayer") was a domestic corporation with a fiscal year ending in December. Through its wholly-owned Company A, located in the United States, it held 100% of the shares of Company B1, a paper company located in a British island territory. Company B1, through a trust for which Company D, a company located in the Netherlands, is the trustee, held 100% of the shares of Company B2, another company located in the same British island territory.
- Domestic corporations generally need to consolidate the income of their foreign paper company subsidiaries with their own income and report it for corporation tax purposes. However, if the subsidiary's income consists of dividends from its subsidiary, there is no need to consolidate. In January 2019, Company B1 received dividends of 86 million dollars from Company B2, but the Taxpayer reported its income without consolidating the dividends.
- The issue at hand is whether Company B1 can be considered to have received dividends from Company B2 through an arrangement equivalent to a Japanese trust.
- If Company B1 is deemed to have received dividends from Company B2 through a Japanese trust, it is generally considered as receiving dividends directly from Company B2. In such a case, since the dividends are from a subsidiary of a subsidiary, there is no need for consolidation. Furthermore, even if Company B1 receives dividends from Company B2 through a foreign trust, if that foreign trust is equivalent to a Japanese trust, it is generally considered as receiving dividends directly from Company B2. Therefore, the key issue in this case is whether the trust for which Company D was the trustee was equivalent to a Japanese trust.



## 2. Assessment issued by the Tax Authorities

- The tax authorities in this case (the “Tax Authorities”) requested the Taxpayer to submit documents regarding the trust for which Company D was the trustee. The Taxpayer submitted the relevant documents, but they were in a foreign language, and the governing law was also foreign law. Therefore, the Tax Authorities proceeded to translate and decipher the submitted documents into Japanese as best as they could. They noticed that some of the documents were unilaterally declared by Company D.
- In Japan, a contract cannot be established without the concurrence of two or more opposing expressions of intent. Therefore, excluding those documents, there were no provisions that obligated Company D to manage and dispose of property according to a certain purpose. As a result, this trust could not be considered equivalent to a Japanese trust, so the dividends from Company B2 were not considered dividends from a subsidiary of a subsidiary. Consequently, the Taxpayer must consolidate this income with their own income. The Tax Authorities imposed an additional corporation tax on the Taxpayer.
- However, the document that the Tax Authorities claimed was unilaterally declared by Company D was actually referenced in a contract regarding the issuance of beneficial interests, which was concluded between Company A and Company D, and it was clearly stated that the terms of the document would be followed. In that case, the contents of the document should be considered part of the contract, as they were incorporated into the contract. Consequently, the Taxpayer filed an appeal.



## 3. Decision made by the National Tax Tribunal

- First, the National Tax Tribunal examined the contractual relationship of the trust for which Company D was the trustee. The document concerning the management of the property attributed to this trust was a document unilaterally declared by Company D. However, the contract regarding the issuance of beneficial interests concluded between Company A and Company D, and the contract regarding the transfer of beneficial interests concluded among Company A, Company B1, and Company D were both established based on the document declared by Company D. Therefore, this document can also be considered part of the contract among Company A, Company B1, and Company D.
- Next, it examined whether this trust could be considered equivalent to a Japanese trust. According to this contractual relationship, the property, which was the shares of Company B2, belonged to Company D, who was supposed to be the trustee. Furthermore, the purpose that Company D must achieve, which was to secure the interests of the beneficiaries as much as possible, was defined. It was also stipulated that Company D had the obligation to manage and dispose of the shares of Company B2 in accordance with this purpose. Therefore, since the contractual relationship of the trust for which Company D was the trustee had the essential three elements of a Japanese trust, this trust could be considered equivalent to a Japanese trust.
- In that case, since Company B1 was receiving dividends from Company B2 through a foreign trust equivalent to a Japanese trust, it was generally considered as receiving dividends directly from Company B2. Therefore, the Taxpayer did not need to consolidate the dividends from Company B2 into its own income, and the National Tax Tribunal canceled the additional corporation tax imposition.

## 4. Tips for resolving differences of opinion

- When the Controlled Foreign Corporation (CFC) rules apply, taxpayers must consolidate the income of their foreign subsidiaries with their own income and report it. Whether these rules apply depends on meeting highly complex requirements, and the application of these requirements largely hinges on how we understand foreign legal and factual matters.
- The fact that foreign jurisdictions are the main battleground in these matters is what causes many disputes surrounding the CFC rules. Foreign countries not only have different legal systems and business practices from Japan, but there are also challenges related to language skills and the ability to gather information.
- It is challenging for taxpayers to accurately grasp foreign legal and factual matters, but it seems that tax authorities struggle even more than taxpayers. As a result, tax audits often lead to the application of CFC rules based on an insufficient understanding.
- In such situations, it is crucial to carefully explain the foreign legal and factual matters to clear up any misunderstandings. However, if it is still not possible to reach an understanding, consider speaking up to the National Tax Tribunal or the courts.

## About Our Tax Controversy Service

### 1. Rebuttal letter as the first step in resolving differences of opinion

When faced with differences of opinion with the tax authorities, the first step is to submit a rebuttal letter in the name of the taxpayer, outlining the taxpayer's opinion and the reasons for it.

### 2. Legal opinion as a taxpayer's trump card

When a difference of opinion is not resolved even if a rebuttal letter is submitted, a legal opinion can be the taxpayer's trump card. Increasingly, there are cases where the taxpayer's opinions are accepted earlier due to the taxpayer filing a legal opinion explaining the detailed rationale for why the taxpayer's opinion should be accepted, together with supporting evidence.

### 3. Tax appeal and litigation as an extension of a tax audit or request for assessment

When a difference of opinion is not resolved during a tax audit or request for assessment, the taxpayer may file a tax appeal and seek a final decision on the matter by the administrative branch. The National Tax Tribunal will issue a decision based on evidence, hearing from both sides in detail. Engaging in tax litigation can also enable the taxpayer to correct an erroneous legal interpretation.

### 4. We provide a comprehensive end-to-end service to resolve tax controversies

We will examine the cause of the difference of opinion, provide consultation on the chances of having the taxpayer's opinion accepted as well as the procedures and costs it will take, and use our strong credentials to assist in performing the required procedures from filing a rebuttal letter and legal opinion to representing you in tax appeal and litigation.

### 5. We have strong credentials for resolving differences of opinion with the tax authorities

There have been numerous examples where our clients' opinions were accepted. Recent examples include the following.

2025	Legal opinion	CFC regime		
2024	Rebuttal letter	Donations	Legal opinion	Heavy penalty tax
	Tax litigation	Article 132-2 of CTA	Tax appeal	Revocation of blue form tax return approval
	Legal opinion	CFC regime	Tax appeal	Property tax
2023	Legal opinion	Bad debt losses and losses on sale of receivables	Legal opinion	Entertainment expenses
	Legal opinion	Article 132-2 of CTA	Legal opinion	Advantageous placement of shares
	Tax litigation	CFC regime		
2022	Legal opinion	Property tax	Tax appeal	Deemed capital gains
	Tax appeal	Corporate gains on donations	Legal opinion	Deemed capital gains
2021	Tax appeal	Reorganization tax regime		
2020	Legal opinion	Stamp tax		

#### ■ Services

>> [From tax audit defense to legal opinions, tax appeals, and tax litigation](#)

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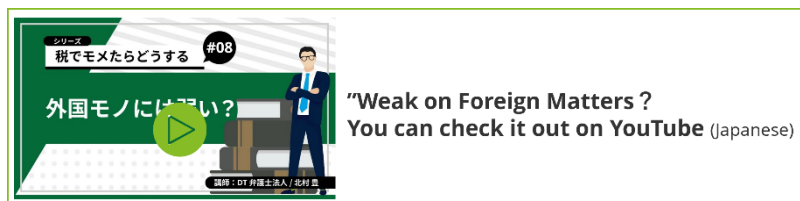
YouTube lectures [What to do if there's a dispute over taxes](#) (Japanese)



Corporate Info



YouTube lectures



**"Weak on Foreign Matters ?  
You can check it out on YouTube (Japanese)**

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