

Tax Treaties, Transfer Pricing and Financial Transactions Division
OECD/CTPA

**Comments on Revised Proposals Concerning the Meaning of Beneficial Owner
in Articles 10, 11 and 12 of the OECD Model Tax Convention**

The Japan Foreign Trade Council (JFTC) is pleased to respond to the OECD request to send comments on the “*Revised Proposals Concerning the Meaning of “Beneficial Owner” in Articles 10, 11 and 12*”, and provide the following comments.

JFTC is a trade-industry association with Japan-based trading companies and trading organizations as its core members. The main activity of its Accounting & Tax Committee is to work to facilitate trade and investment by providing business views and/or specific policy proposals to regulatory authorities concerning tax matters. The member companies of the Accounting & Tax Committee of JFTC are listed at the end of this document.

Comments on the Commentary on Article 10	
Para. 12.4	Revised proposal
	<p><i>“....., the recipient of the dividend is not the "beneficial owner" because that recipient's right to use and enjoy the dividend is constrained by a contractual or legal obligation to pass on the payment received to another person. Such an obligation will normally derive from relevant legal documents but may also be found to exist on the basis of facts and circumstances showing that, in substance, the recipient clearly does not have right to use and enjoy the dividend unconstrained by a contractual or legal obligation to pass on the payment received to another person. This type of obligation must be related to the payment received; it would therefore not include contractual or legal obligations unrelated to the payment received even if those obligations could effectively result in the recipient using the payment received to satisfy those obligations.....”</i></p>
	<p>Comments on the revised proposal</p>
	<p>✓ We are concerned that it is unclear what it means to be "related" or "unrelated." The use of the terms "related (or unrelated)" without additional explanations could create uncertainty. At least, to clarify the extent of “being related”, we suggest that a word</p>

	<p>“directly” is inserted as follows.</p> <p><i>“This type of obligation must be directly related to the payment received.”</i></p> <p>✓ We are concerned that the current proposal could allow for a broad interpretation of the concept of “constrained.” Without further explanations, even in non-abusive cases, it might be deemed that the right to use and enjoy the dividend is constrained by a shareholder simply because a substantial portion of the share or the voting right is held by the shareholder. To make clear the concept of “constrained”, we suggest that the following sentence is added in the commentary.</p> <p><u>“The fact that a company is controlled by the shareholder(s) with the majority of voting rights shall not of itself constitute a situation where the company’s right to use and enjoy the dividend received is ‘constrained’ in the context of Article 10. Likewise, the fact that the shareholder(s) participate(s) in the decision-making of the dividend distribution from the company through the voting rights shall not of itself constitute the situation where the company’s right to use and enjoy the dividend received is ‘constrained’ in the context of Article 10.”</u></p>
<p>Comments on the Commentary on Article 11</p>	
<p>Para. 10.2</p>	<p>Revised proposal</p>
	<p><i>“....., the recipient of the interest is not the "beneficial owner" because that recipient's right to use and enjoy the interest is constrained by a contractual or legal obligation to pass on the payment received to another person. Such an obligation will normally derive from relevant legal documents but may also be found to exist on the basis of facts and circumstances showing that, in substance, the recipient clearly does not have right to use and enjoy the interest unconstrained by a contractual or legal obligation to pass on the payment received to another person. This type of obligation must be related to the payment received; it would therefore not include contractual or legal obligations unrelated to the payment received even if those obligations could effectively result in the recipient using the payment received to satisfy those obligations....”</i></p>
<p>Comments on the revised proposal</p>	
	<p>✓ Same comments as those on Article 10 above. We suggest that the word “directly” is inserted as follows.</p> <p><i>“This type of obligation must be directly related to the payment received.”</i></p> <p>✓ In addition, as described above, we suggest that the following sentence is added in the commentary.</p> <p><u>“The fact that a company is controlled by the shareholder(s) with the majority of voting rights shall not of itself constitute a situation where the company’s right to use and enjoy the interest received is ‘constrained’ in the context of Article 11.”</u></p>

Comments on the Commentary on Article 12	
Para. 4.3	Revised proposal
	<p><i>“..., the recipient of the royalties is not the "beneficial owner" because that recipient's right to use and enjoy the royalties is constrained by a contractual or legal obligation to pass on the payment received to another person. Such an obligation will normally derive from relevant legal documents but may also be found to exist on the basis of facts and circumstances showing that, in substance, the recipient clearly does not have right to use and enjoy the royalties unconstrained by a contractual or legal obligation to pass on the payment received to another person. This type of obligation must be related to the payment received; it would therefore not include contractual or legal obligations unrelated to the payment received even if those obligations could effectively result in the recipient using the payment received to satisfy those obligations....”</i></p>
	<p>Comments on the revised proposal</p> <p>✓ Same comments as those on Article 10 above. We suggest that the word “directly” is inserted as follows.</p> <p><i>“This type of obligation must be <u>directly</u> related to the payment received.”</i></p> <p>✓ In addition, as described above, we suggest that the following sentence is added in the commentary.</p> <p><i><u>“The fact that a company is controlled by the shareholder(s) with the majority of voting rights shall not of itself constitute a situation where the company’s right to use and enjoy the royalties received is ‘constrained’ in the context of Article 12.”</u></i></p>

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