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Please send to Policy & Legal Division, Planning & Coordination, Bureau, Financial Services Agency.

Opinion Regarding Tax Reform in Fiscal Year 2013

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<Opinion>

Submitter	The American Chamber of Commerce in Japan			
Subject	Tax Treatments of permanent establishment for overseas investors related to own or rental of server equipments in Japan			
【About Opinion】				
1. Types of Opinion (Multiple answers allowed)	《Please check all that apply.》			
	<input checked="" type="radio"/>	Newly-created Tax Breaks →Answer 2. ~8.、 10.~11.		
	<input type="radio"/>	Extension of Existing Tax Breaks →Answer 2.~8.、 10.~11.		
	<input type="radio"/>	Expansion of Existing Tax Breaks →Answer 2.~8.、 10.~11.		
	<input type="radio"/>	Abolishing of Existing Tax Breaks →Answer 2.~4.、 10.~11.		
2. Types of Tax items (Multiple answers allowed)	《Please check all that apply. Write name of the taxes if you choose "others".》			
	【National Tax】		【Local Tax】	
	<input type="radio"/>	Income Tax	<input type="radio"/>	Individual Inhabitant Tax
	<input checked="" type="radio"/>	Corporate Tax	<input checked="" type="radio"/>	Corporate Inhabitant Tax
	<input type="radio"/>	Inheritance Tax / Gift Tax	<input checked="" type="radio"/>	Enterprise Tax
	<input type="radio"/>	Registration / License Tax	<input type="radio"/>	Real Estate Acquisition Tax
	<input type="radio"/>	Consumption Tax	<input type="radio"/>	Fixed Assets Tax
	<input type="radio"/>	Documentary Stamp Tax	<input type="radio"/>	Business Office Tax
	<input type="radio"/>	Others ()	<input type="radio"/>	Others ()
3. Related Provisions	Corporate Tax Law article 141			

<p>4 . Details of the Opinion</p>	<p>It is common practice for overseas investors to place automated trading programs on servers in close proximity to exchanges, so as to assure the speedy execution of trades. Speedy execution is crucial to success in the global financial environment. Under current Japanese law, overseas investors may neither own nor rent the server which houses the investors' proprietary trading program, without risking the creation of a “permanent establishment” and thus being subject to liability for taxes on trading activity in Japan.</p> <p>We request that overseas investors who own or rent servers in Japan for the purpose of conducting fully automated program-based stock trading within Japan, and for trading limited to securities, not be treated as having a “permanent establishment” which would require the investor to file tax returns and the Japanese corporate taxes on the trading income for the sole reason that the overseas investor owns or rents a server or processing and storage capacity on a server in Japan.</p>			
<p>5 . Applicable Period</p>	<p>《Please choose between the two. If you choose "Fixed-term", the second one, write how many years.》</p>			
	<input checked="" type="radio"/>	<p>Permanent</p>		
	<input type="radio"/>	<p>Fixed-term (</p>		<p>years)</p>
<p>6 . Neccesity</p>	<p>《Please explain the reason and the background for introducing this Tax Breaks.》</p>			

	<p>It is increasingly common, with the development of technologically sophisticated and automated trading systems, for investors abroad to set up trading programs on servers near exchanges in a given country, so as to reduce “latency,” or the amount of time between ordering and executing a trade. Other jurisdictions in the US and Europe allow investors to own or rent servers near their exchanges, without giving rise to the creation of a “permanent establishment.” Because those programs are fully automated and require no human presence to operate, the other jurisdictions do not treat the ownership or rental of servers as signaling the existence of a “permanent establishment.”</p> <p>Through that treatment, the markets in West have encouraged non-resident program trading which has contributed to the growth and development of both the financial services industry and the information technology industry of the host country.</p> <p>Because Japan’s current system treats the ownership or rental of servers used for the purpose of automated trading as amounting to the creation of a “permanent establishment,” Japan’s current tax regime does not meet the needs of the overseas investing community, which is extremely sensitive to the risk of double taxation and the cost of preparing additional records and tax returns. This discourages global investors from full participation in Japan’s securities market and thus hurts the development of Japan as a financial center.</p> <p>Changing the laws as described above, so that a non-resident who executes fully automated trades in Japan is not treated as having a “permanent establishment,” will lead to the development of Japan as a crucial financial center for Asia and contribute significantly to the growth of both the securities and technology industries in Japan.</p>
7. Effects	<p>《 (1) Effect expected from introducing the tax breaks (2) cause & effect relationship (3) Reason why this measure would be effective even if tax revenues decrease (4) To the extent possible provide a quantitative analysis, based on past results, of the impact that would occur if this measure is not introduced.</p> <hr/> <p>By treating overseas investors engaged in this activity as not having a “permanent establishment” in Japan, overseas investors in turn would invest more in Japan would help to increase volumes and liquidity on Japan’s exchanges. All this, in turn, would increase demand for a wide range of goods and services, including IT equipment, server facilities, IT services, and financial services.</p>

8. Status & Necessity	《Please explain the importance and appropriateness of introducing the tax breaks. (No need to explain about subsidization or easing of regulations, etc.)》			
	By treating overseas investors engaged in this activity as not having a “permanent establishment” in Japan, overseas investors in turn would invest more in Japan would help to increase volumes and liquidity on Japan’s exchanges. All this, in turn, would increase demand for a wide range of goods and services, including IT equipment, server facilities, IT services, and financial services.			
9. Reasons for Abolishing	【 (1) Reason for abolishing the existing tax relief.】			
	【 (2) Effect expected from abolishing of existing tax relief】			
10. Increase & Decrease in	【 (1) Increase/Decrease in Tax Revenue】 《If the proposed changes are adopted, please state in the upper row the increase or decrease in tax revenues (in units of one million yen) in comparison to the current tax rules (including any temporary or special provisions that are applicable under current law). In the lower row (in brackets) please state the increase or decrease in tax revenue in comparison to the principle tax rules (i.e., the tax law that would apply if there were no other special provisions in place).》			
	Initial year		Normal year	
		million yen		million yen
	(million yen)	(million yen)
	【 (2) Basis of calculation methods or reason why tax revenues will not increase or decrease】			
	《 (1) If an increase or decrease in tax was provided in (1) above, please state the basis of the calculation (calculation type, source of data, etc.). If there is no amount indicated in (1) above, please state the reasons why.》			

	<ul style="list-style-type: none"> - Because the current tax system discourages foreign investors from participating in Japan's securities markets, this change would do little to reduce tax revenues from that sort of trading activity. - By stimulating the information technology industry, a new tax treatment that does not treat an overseas investor as having a permanent establishment would increase tax revenues from the technology sector, which would provide goods and services to those investors. - Foreign markets have shown that encouraging program trading by non-residents has boosted new product development and overall activity in markets, thereby boosting tax revenues and employment.
11. Others	<p>《 (Example) Research papers / proposals regarding the importance of this Tax Relief》</p> <p>Most foreign jurisdictions with active and growing securities markets, including the U.S., the U.K., Hong Kong and Singapore, have signaled to overseas investors that this sort of fully automated trading of securities by non-residents will not be taxed.</p>