

Informal Translation of 'Zeisei Mail Magazine No.9' by the MoF (excerpts)

What is the relationship between the United Nations Convention against Corruption ('Fuhai' in Japanese that means something gone rotten) and taxation?

When we say 'fuhai' or something has gone rotten, we're not necessarily talking about food. The UN Convention against Corruption was created as an international measure to combat the problem of corruption including bribery and other forms. It was signed by Japan in December 2003. (The Convention has yet to be implemented, and Japan is currently considering its ratification.) Meanwhile, the OECD implemented the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions in 1999 as well as related recommendations. Thirty five countries including Japan are parties to this Convention.

For corporation tax and income tax, which are taxation on income, the greater the amount of expenses, the less the tax that must be paid. This Convention and the recommendations require all countries to not permit bribes to be deducted as expenses in tax calculations. The reasons are to ensure that prison terms and monetary fines, as a matter of course, and also tax burdens, become severe, and also that bribery becomes "an expense that doesn't pay."

Actually, before the OECD recommendations, Japan moved to prevent bribes paid from being included as expenses in tax calculations, without distinguishing between Japanese and foreign public officials.

Companies that made under-the-table payments such as bribes perhaps did not clearly reveal the name of the recipient of the payment out of fear that the recipient's identity would be understood. In Article 62 of the Special Taxation Measures Law, these expenses are referred to as "undercover expenses" Needless to say, they cannot be deducted as expenses. In addition to the usual corporation tax, payment of tax at the rate of 40% of the amount paid will also be required.

Furthermore, even in the case that the recipient of the payment of bribes by the company is clearly declared, the payment cannot be deducted as an expense. Article 61 (4) of the Special Taxation Measures Law provides that entertainment expenses usually cannot be included in expenses for the purpose of corporation tax calculation. Bribes paid by a company are included in entertainment expenses.

Bribes paid by individual enterprises to foreign public officials cannot be included in expenses in income tax calculations either. Article 37 of the Income Tax Law provides that deductible items are expenses directly necessary for gaining revenue, but illegal expenditures such as bribes cannot be considered as expenses directly necessary for gaining revenue.

In the courts, too, inclusion in expenses of expenses such as expenditure prohibited by law is not permitted.

Japanese companies and companies from other countries desire fair competition in the international community. To achieve this, a slightly unusual role is expected internationally also in the aspect of taxation.