BLAKEMORE & MITSUKI

Briefing

STRATEGIC M&A TAX ADVICE

No Tax Burden Will Be Imposed on TOB Using Own Shares

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Introduction

The Ministry of Economy, Trade and Industry (hereinafter "**METI**") and the Ministry of Finance Japan (hereinafter "**MOF**") have a strong interest in introducing a new taxation system where no tax burden will be imposed on shareholders who, through the TOB process, sell their shares in exchange for the purchasing companies' shares. TOB refers to the mandatory tender offer bid rules, which provide regulations regarding the sale or purchase of shares of listed companies.

Current Problem

Under the current taxation system, when a shareholder sells his/her share in exchange for a purchasing company's own share, he/she is taxed on the net gain of the exchanged share. This creates a problem: the shareholder, having sold the share, received no cash and yet must pay the tax. As a result, the current system has been criticized as discouraging shareholders from selling their shares when they are to receive purchasing companies' shares.

New System

The current system does allow shareholders of this kind to defer their net gain until they sell the purchasing companies' shares. However, this requires a special certification under the Act on Strengthening Industrial Competitiveness. The new system, which will be called "Kabushiki Koufu Seido", will enable shareholders to defer a net gain not as an exception but as the general rule and will eliminate the need to obtain special certification. METI and MOF are planning to submit the bill to the National Diet this autumn.

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