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EBC voices concern over Government of Japan changing position on triangular mergers

The European Business Council in Japan (EBC) today expressed deep concern that the Government of Japan appears to be changing its position towards tax deferral in triangular mergers, such that new investors in Japan's market effectively would not be able to use the scheme. Thus the restrictions currently being considered by the Government contradict its own policy of promoting FDI in Japan.

The EBC, along with the American Chamber of Commerce in Japan (ACCJ), has long maintained that enabling such tax deferral is absolutely critical to the success of triangular mergers in attracting foreign direct investment. Without tax deferral, shareholders, large and small, will face the burden of paying capital gains tax at the time of receiving their shares, rather than at a later date when the shares are sold - making the deal prohibitive because they must pay tax at a time when they have received no cash.

Under current rules for domestic companies, tax deferral is granted when the merging companies are considered to operate businesses that have synergies with each other.

METI itself has previously argued in its August Tax Request Item to MOF that the same rules should be applied to the new triangular merger scheme, such that the potential "synergies" from a merger between a foreign parent company and a Japanese company would be taken into consideration. The EBC advocates this approach, since government experts and others have always assumed that the Japan subsidiary of the foreign company would be created only for the purpose of conducting the triangular merger. Such transactions would constitute true cross-border reorganizations as the government has tried to introduce for the past two-and-a-half years.

Under considerable pressure from domestic lobby groups, however, the Government seems now to have suddenly changed its stance and is considering confining tax deferral only to purely domestic triangular mergers. Under this rule, unless a foreign company *already has an existing business in Japan*, deferral will not be available. This would prevent new entrants to Japan's markets from using the scheme, in direct contradiction of the government's policy goals with regard to tax deferral as agreed and approved by the Japan Investment Council.

"*Imposing limitations on tax deferrals along these lines will make the triangular merger scheme completely impractical for new investors to Japan and undermine the credibility of the Government's FDI promotion policies*" said Mr. Richard Collasse, Chairman of the EBC.

About the EBC:
The European Business Council (EBC) is the trade policy arm of the 17 European national chambers of commerce and business associations in Japan. Established in 1972, the EBC works to improve the trade and investment environment for European companies in Japan. The EBC currently represents more than 3,000 local European companies and individuals who are members of their national chambers of commerce. 350 of these companies participate directly in the EBC's 29 sector-based committees.

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