Limits of Applicability of a GAAR on Family Corporations in Japan against Debt Push-Downs

－Focusing on the Anti-Tax Avoidance Directive in the EU－

Shigetaka Nakamura*

Abstract:

This article concludes that there are limits of applicability of article 132, paragraph 1 of the *Corporation Tax Act* [*Hojin Zei Ho*(CTA)] against debt push-downs. Article 132, paragraph 1 of the CTA is considered as a general anti-tax avoidance rule on family corporations. Article 132, paragraph 1 of the CTA has a standard for 'unreasonable decrease of the burden of corporation tax', the so-called 'Unreasonableness Requirement'. The high court of Tokyo in Japan on June 24, 2020 (Universal Music case) held interest deduction could not be denied by relying on article 132, paragraph 1 of the CTA.

This article examines applicability of article 132, paragraph 1 of the CTA against debt push-downs through measures in the EU, especially the Anti-Tax Avoidance Directive (ATAD). This study follows two suggestions: (1) Article 6 of the ATAD, which is titled as a 'General anti-abuse rule' (GAAR), cannot work if debt push-downs are regarded as genuine. Therefore, a fixed ratio EBITDA rule on the amount of interest deduction is an appropriate measure against debt push-downs; (2) Article 15, paragraph 1, item (a), which is considered as a GAAR in the Merger Tax Directive, seems not to be discussed as a measure against debt push-downs.

In conclusion, as the 'Unreasonableness Requirement' would not be able to work against debt push-downs, there are limits of applicability of article 132, paragraph 1 of the CTA. It's also worth noting that the unreasonableness requirement of article 132(2), paragraph 1 of the CTA, which is considered as a general anti-tax avoidance rule on corporate reorganizations, seems to be mixed into the 'Unreasonableness Requirement' in the decision of the Universal Music case. It seems to be unfavorable as it means that article 132(2), paragraph 1 of the CTA is substantially linked to article 132, paragraph 1 of the CTA.

Keywords:
Unreasonableness Requirement, Debt Push-Downs, GAAR, ATAD, Interest Limitation

* Professor of Tax Law at Kansai University school of Accountancy [mailto: s-naka@kansai-u.ac.jp]

I. Introduction

The high court of Tokyo in Japan on June 24, 2020[1] (hereinafter; Universal Music case) held interest deduction could not be denied by relying on article 132, paragraph 1 of the *Corporation Tax Act* [*Hojin Zei Ho*(CTA)]. That interest deduction was caused through debt push-downs. Debt push-downs are considered as one of Base Erosion and Profit Shifting (Hereinafter; BEPS) transactions. According to the decision of the Universal Music case, debt push-downs mean following transactions:

'Generally, a parent corporation bears the financial burden of repayment of debt to a subsidiary located downstream of the corporate group's capital relationship. That is, where the corporate group raises funds necessary for its business from financial institutions outside the corporate group and the procured funds are distributed according to the fund demand of each corporation in the group, the subsidiary does not bear the financial burden of debt if the parent corporation raises relevant funds and invests them in the subsidiary. However, if the parent corporation makes the funds to the subsidiary, the financial burden of debt is transferred to the subsidiary. On the one hand, from a financial point of view, it is reasonable for a large subsidiary that has a large amount of profits to bear more debt. On the other hand, from a tax point of view, it is reasonable for a subsidiary that is situated at a country with a high tax rate and that has a large amount of profits and that pays a large amount of tax to bear more debt.'

By the way, article 132, paragraph 1 of the CTA is considered as a general anti-tax avoidance rule restricted to the particular field[2]. Article 132, paragraph 1 of the CTA has a standard for 'unreasonable decrease of the burden of corporation tax', the so-called 'Unreasonableness Requirement[3]'.

This article examines whether article 132, paragraph 1 of the CTA can work against debt push-downs, such as the Universal Music case. The method of this article is based on an approach of comparative law, especially the Anti-Tax Avoidance Directive (hereinafter; ATAD)[4] in the EU. This article proceeds as follows. Part II of this article explains measures against interest deduction through debt push-downs in Japan and discusses on the Universal Music case. Part III analyzes the ATAD, and the relation to the ATAD and the Merger Tax Directive (hereinafter; MTD)[5]. Part IV shows two suggestions and discusses on relevant suggestions. Part V provides concluding remarks.

II. Measures against Interest Deduction through Debt Push-Downs in Japan

1. Four Measures against Interest Deduction

A fundamental text for international taxation explains that there are four measures against interest deduction[6]. Three of their measures are specific measures: (1) Transfer

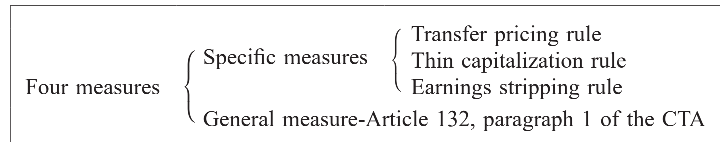

Figure 1 Positioning of Four Measures

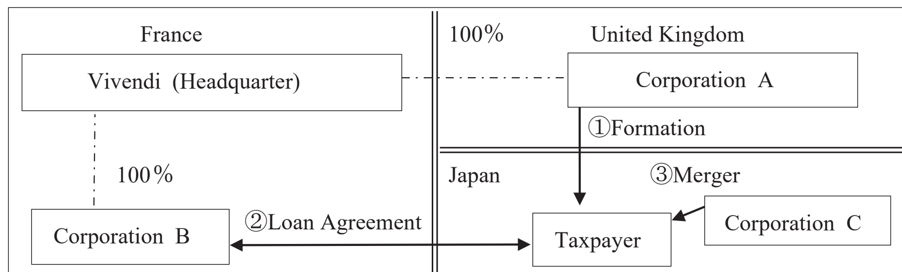

Figure 2 Transactions in the Present Case

pricing rule[7)], (2) Thin capitalization rule[8)], and (3)Earnings stripping rule[9)]. Three measures are all regulated in the *Act on Special Measures Considering Taxation* and are considered as anti-tax avoidance measures in the international transactions. The remaining one is not a specific measure, but a somewhat general measure[10)]. That measure is article 132, paragraph 1 of the CTA. Figure 1 shows positioning of above-mentioned four measures.

The Universal Music Case was, however, a case before an earnings stripping rule was introduced in Japan. Therefore, the issue of the Universal Music case was applicability of article 132, paragraph 1 of the CTA.

2. Universal Music Case

(A) Facts

The Universal Music case is related to international corporate reorganizations and financial transactions by Vivendi Group headquartered in France. As transactions in the present case are very complex, Figure 2 is a summary of transactions necessary for the discussion of this article.

In chronological order, firstly, Universal Music LLC (hereinafter; Taxpayer), which is a Japanese corporation for the purpose of music businesses, was established by foreign corporation A in the United Kingdom ('① Formation' in Figure 2). Secondly, the Taxpayer has entered into a monetary loan agreement with foreign corporation B in France for the purpose of raising funds to merge domestic corporation C ('② Loan Agreement' in Figure 2). Then, the Taxpayer merged with domestic corporation C ('③ Merger' in Figure 2).

As mentioned above, by borrowing from foreign corporation B (hereinafter; the

Borrowing concerned), that merger was operated, but the Borrowing concerned was caused by debt push-downs under decision-making of the Vivendi Group. it's also worth noting that all subsidiaries in Figure 2 are family corporations, which have a 100% direct or indirect ownership relation with Vivendi.

(B) Claims of Tax Authorities

Tax authorities claim as follow:

'As the Borrowing concerned is extremely abnormal and irregular, and there is no legitimate reason and business purpose other than tax avoidance for doing this, it is recognized that it lacked economic reasonableness and was illegitimate.'

Furthermore, tax authorities claim in relation to debt push-downs as follow:

'Debt push-downs operated as transactions within a corporate group does not bring new profits into that group from the outside, and neither the subsidiary (Acquirer – an annotation by the present author) nor other subsidiary within the group (Target – an annotation by the present author) can be considered to have a substantial demand for funds in many cases, so the introduction of debt of the Borrowing concerned causes only an economic sacrifice for the subsidiary. … to reduce the debt of the Dutch corporation… and to rationalize the finances of the Vivendi Group are not directly linked to the Taxpayer's economic reasonableness, or even though they are linked to it, the Taxpayer only gets indirect or abstract profits and their profits are no more than the Taxpayer's sacrifice.'

(C) Decision

Firstly, the high court of Japan on June 24, 2020 clarified that present decision adopted a so-called economic reasonableness standard, and held:

'… Article 132, paragraph 1 of the CTA maintains fairness of tax burden in view of the fact that it is easy for family corporations controlled by a small number of shareholders to carry out acts or calculations that result in unreasonably reducing the burden of corporation tax. Therefore, where relevant acts or calculation are conducted, tax authorities are granted to revert them to normal acts or calculations and to decide corporation tax. From the purpose of article 132, Paragraph 1 of the CTA, "whether acts or calculations can be deemed to be performed in an attempt to reduce the burden of corporation tax unreasonably" must be judged by whether or not relevant acts or calculations are considered unnatural and unreasonable as a pure economic person from an economic and substantive point of view, that is, an objective and reasonable standard. (Therefore, above-mentioned acts or calculations of family corporations that lack economic reasonableness are unnatural or unreasonable and fall under the Unreasonableness Requirement as tax avoidance.)'

Secondary, the high court of Japan clarified about a standard on the 'Unreasonableness Requirement' of article 132, paragraph 1 of CTA. The decision stated:

'… Whether or not an unsecured loan of money from shareholders of family corporations or related corporations falls under the "Unreasonableness Requirement" must be considered in line with specific and concrete cases based on the reasons for the purpose of the Borrowing concerned, its amount, period of the loan, and the reason for an unsecured loan and so on. In particular, where the above-mentioned Borrowing concerned is carried out as part of the reorganization of the corporate group to which the Taxpayer belongs (hereinafter; Corporate Reorganizations), as the Corporate Reorganizations are complex and various in the forms or ways, in light of the fact that tax avoidance is likely to be carried out cleverly and may be abused as a means, determination as to whether or not the relevant Borrowing concerned lacks economic reasonableness, must be made by first taking into consideration, among others, (1) Corporate Reorganizations involving the Borrowing concerned is whether it is unnatural or not, such as based on procedures and methods like Corporate Reorganizations that are not normally expected, or the creation of an appearance that is alienated from reality, and (2) whether there is any business objective or any other factor that could be a reasonable ground for operating Corporate Reorganizations involving the relevant Borrowing concerned, except for reducing the tax burden. This also applies to that Borrowing concerned made as part of international Corporate Reorganizations.'

Finally, after the circumstances of (1) and (2) above were firstly considered and the reasons for the purpose of that Borrowing concerned, its amount, period of the loan, and the reason for an unsecured loan and so on were considered together, the high court of Japan held that interest deduction could not be denied by relying on article 132, article 1 of the CTA. The decision stated:

'There is no circumstance that the relevant Borrowing concerned can be said to be unnatural and unreasonable as a pure economic person from an economic and substantial point of view, that is, it lacks economic reasonableness. Therefore, it is reasonable to understand that the relevant Borrowing concerned cannot be said to be an unnatural or unreasonable tax avoidance act, and that it does not deemed to an act that results in unreasonably reducing the burden of corporation tax.'

3. Preceding Studies and their Limits

There are many comments on Universal Music case[11)]. Among many comments, I would like to introduce two comments. The first is an adoption of a new standard for economic reasonableness[12)]. This is showed in the second paragraph of above-mentioned 2(C) of the Part II. The second is a use of terms similar to the unreasonableness requirement of article 132(2), paragraph 1 of the CTA[13)]. This is showed in terms of (1) and (2) in the third paragraph of above-mentioned 2(C) of the Part II.

By the way, among many comments, professor Suzuki has a same opinion to the present author, except the introduction of a general anti-tax avoidance rule which is not restricted

to the particular field. If interest deduction caused by debt push-downs has economic reasonableness, the relevant interest deduction cannot be denied by relying on article 132 of the CTA[14)], professor Suzuki insists. I also agree to his opinion. However, I cannot agree to his another opinion - the introduction of a general anti-tax avoidance rule against BEPS transactions. Because unilateral methods do not work effective against BEPS transactions and bilateral methods work effective[15)].

Professor Nagato's preceding study is very instructive. However, he mainly refers to a general anti-tax avoidance rule against BEPS transactions rather than debt push-downs directly. Therefore, in the article, the present author mainly argues debt push-downs thorough the discussions in the EU.

For the discussions in the EU, a preceding study is an article[16)] described by Frederik Boulogne. His article clearly shows problems for debt push-downs and the direction of a solution in the EU. Therefore, the present author refers to his article.

III. Measures against Interest Deduction through Debt Push-Downs in the EU

1. Legal Framework of the ATAD[17)]

On January 28, 2016 the European Commission presented its proposal[18)] for an anti-tax avoidance directive as part of the anti-tax avoidance package. On June 20, 2016 the European Council adopted the directive (EU) 2016/1164 laying down rules against tax avoidance practices that directly affect the functioning of the internal market－the ATAD.

In order to provide for a comprehensive framework of anti-abuse measures, the European Commission presented its proposal[19)] on October 25, 2016, to complement the existing rule on hybrid mismatches. The rule on hybrid mismatches aims to prevent corporations from exploiting national mismatches to avoid taxation.

The ATAD contains five legally-binding anti-abuse measures, which all Member States should apply against common forms of aggressive tax planning. Member States should apply these measures as from 1 January 2019.

Table 1 shows the structure of the ATAD briefly.

The ATAD creates a minimum level of protection against corporate tax avoidance throughout the EU, while ensuring a fairer and more stable environment for businesses.

The anti-avoidance measures in the ATAD other than the rule on hybrid mismatches, are (1) Controlled foreign company (CFC) rule to deter profit shifting to a low/no tax country, (2) Switchover rule to prevent double non-taxation of certain income, (3) Exit taxation to prevent companies from avoiding tax when re-locating assets, (4) Interest limitation to discourage artificial debt arrangements designed to minimize taxes, (5) General anti-avoidance rule (hereinafter; GAAR) to counteract aggressive tax planning when other rules do not apply.

Table 1 Structure of the ATAD

Chapter (Title)	Article	Main content
		Preamble
I (GENERAL PROVISIONS)	1	Scope
	2	Definitions
	3	Minimum level of protection
II (MEASURES AGAINST TAX AVOIDANCE)	4	Interest limitation rule
	5	Exit taxation
	6	General anti-abuse rule
	7	Controlled foreign company rule
	8	Computation of controlled foreign company income
	9	Hybrid mismatches
III (FINAL PROVISIONS)	10	Review
	11	Transposition
	12	Entry into force
	13	Addressees

2. Interest limitation rule

(A) Article 4 of the ATAD

Firstly, the preamble to article 4 of the ATAD states as follows:

'In an effort to reduce their global tax liability, groups of companies have increasingly engaged in BEPS, through excessive interest payments. The interest limitation rule is necessary to discourage such practices by limiting the deductibility of taxpayers' exceeding borrowing costs. It is therefore necessary to fix a ratio for deductibility which refers to a taxpayer's taxable earnings before interest, tax, depreciation and amortisation (EBITDA). Member States could decrease this ratio or place time limits or restrict the amount of unrelieved borrowing costs that can be carried forward or back to ensure a higher level of protection. Given that the aim is to lay down minimum standards, it could be possible for Member States to adopt an alternative measure referring to a taxpayer's earnings before interest and tax (EBIT) and fixed in a way that it is equivalent to the EBITDA-based ratio. Member States could in addition to the interest limitation rule provided by this Directive also use targeted rules against intra-group debt financing, in particular thin capitalisation rules. Tax exempt revenues should not be set off against deductible borrowing costs. This is because only taxable income should be taken into account in determining how much interest may be deducted.[20]'

Secondary, article 4 of the ATAD has eight provisions. Table 2 shows five groups, which the present author tried to classify for a viewpoint of contents.

Table 2 Article 4 of the ATAD

Group	Paragraph Number of Article 4 of the ATAD	Contents
1	Paragraph 1	Interest deduction limitation (up to 30% of the EBITDA)
2	Paragraph 2	Calculation of the EBITDA
3	Paragraph 3-5, 7	Derogation from paragraph 1
4	Paragraph 6	Carry-back and Carry-over for exceeding borrowing costs which cannot be deducted
5	Paragraph 8	Covered scope of the consolidated group for the purpose of this article

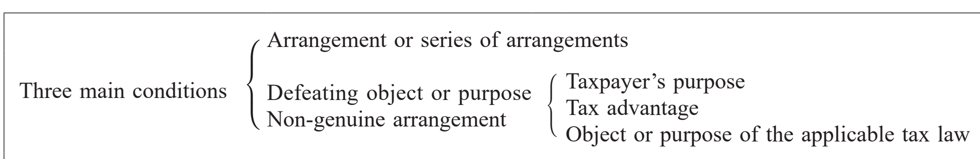

Figure 3 Conditions of the Application of Article 6

(B) Article 6 of the ATAD

Firstly, the preamble to article 6 of the ATAD states as follows:

'General anti-abuse rules (GAARs) feature in tax systems to tackle abusive tax practices that have not yet been dealt with through specifically targeted provisions. GAARs have therefore a function aimed to fill in gaps, which should not affect the applicability of specific anti-abuse rules. Within the Union, GAARs should be applied to arrangements that are not genuine; otherwise, the taxpayer should have the right to choose the most tax efficient structure for its commercial affairs. It is furthermore important to ensure that the GAARs apply in domestic situations, within the Union and vis-à-vis third countries in a uniform manner, so that their scope and results of application in domestic and cross-border situations do not differ. Member States should not be prevented from applying penalties where the GAAR is applicable. When evaluating whether an arrangement should be regarded as non-genuine, it could be possible for Member States to consider all valid economic reasons, including financial activities.[21)]'

Secondary, article 6 of the ATAD has three provisions[22)]. The application of article 6 requires the fulfilment of three main conditions[23)].

Figure 3[24)] shows the conditions of the application of article 6. The first condition is that there be an "arrangement o series of arrangements"[25)]. "Arrangements" include all possible actions taken by a taxpayer[26)]. The second condition can be divided into three separate elements: (1) the taxpayer's purpose, (2) the tax advantage and (3) the object or purpose of the applicable tax law[27)]. While the first is a "subjective" element, the second

condition overall is “objective” one, since main part of that condition is not the taxpayer’s purpose, but the object or purpose of the national tax law, which is an objective criterion[28]. Lastly, the third condition is that the arrangement or series thereof are non-genuine, which could be described as the “objective” element of the GAAR[29].

(C) Arguments by Frederik Boulogne

Frederik Boulogne points out that debt push-downs raises two concerns:

First, a combination of economic leverage effect and a tax-induced bias towards debt financing encourages the target company’s acquisition with relatively high levels of debt[30]; and

Second, the decrease in the target company’s taxable income (through the interest deduction) is often not paired with any increase in taxable income[31].

In his opinion, this second aspect – an increase in (deductible) interest expense without an increase in taxable income – is the key concern with debt push-downs[32].

Also, according to his analysis, firstly, where the shares in a target company are bought from a third party and a third-party acquisition loan is pushed down, a fixed ratio EBITDA rule setting a cap on the amount of interest deduction is considered an appropriate antidote against risks of base erosion under BEPS Action 4 and the ATAD[33]. Secondary, given the valid commercial reasons underlying both the acquisition and the financing (making it a genuine arrangement), interest deduction cannot be denied by relying on a GAAR[34].

Furthermore, in his opinion, even when the shares in the target company are acquired from a group company and an intra-group loan is pushed down, the above analysis is similar[35]. While the need for financing would be somewhat artificial (unless there are valid commercial reasons for the intra-group restructuring) and there is some risk of repetition (shares in group corporations could be constantly transferred intra-group to allow for even higher levels of debt being pushed down), it still remains difficult to deny interest deduction by relying on a GAAR, as the object or purpose of the applicable tax law, which will be clearly shaped by the EBITDA rule, would not be defeated[36].

3. Relation to the ATAD and the Merger Tax Directive for GAARs

I would like to make sure of the relation to the ATAD and the MTD for GAARs, as it is necessary to discuss at the Part IV.

The MTD has a GAAR in article 15, paragraph 1, item (a)[37]. Article 15, paragraph 1, item (a) states:

‘A Member State may refuse to apply or withdraw the benefit of all or any part of the provisions of Articles 4 to 14 where it appears that one of the operations referred to in Article 1:

(a) has as its principal objective or as one of its principal objectives tax evasion or tax avoidance; the fact that the operation is not carried out for valid commercial reasons such as the restructuring or rationalisation of the activities of the companies

participating in the operation may constitute a presumption that the operation has tax evasion or tax avoidance as its principal objective or as one of its principal objectives;'

As mentioned above, article 6 of the ATAD has "a function aimed to fill in gaps, which should not affect the applicability of specific anti-abuse rules." However, it is uncertain whether article 6 of the ATAD can require the denial of a tax advantage in circumstances that fall within the scope of article 15, paragraph 1, item (a) of the MTD, or whether article 15, paragraph 1, item (a) of the MTD decisively defines the meaning of "abuse" within its field and leave no room for the application of article 6 of the ATAD[38).

Under relevant situations, a preceding study points out as follows:

Article 6, paragraph 1 '**refers to "arrangements" or "series of arrangements", which may also include reorganizations**[39).'

Then, that study points out as follows:

'Whilst the updated Parent-Subsidiary Directive includes an obligation to counter abusive practices, the Merger Directive was not updated in this respect[40). Therefore, the link to ATAD I[41) is of great importance in the area of the Merger Directive.'

In my opinion, though terms[42) of a GAAR in the ATAD I are somewhat different[43) from terms of article 6 of the ATAD, an above-mentioned opinion seems to be applicable to the current ATAD. Therefore, on the one hand, article 6 of the ATAD seems to be applicable to circumstances that fall within the scope of article 15, paragraph 1, item (a) of the MTD. On the other hand, article 15, paragraph 1, item (a) of the MTD is not applicable to circumstances that fall within the scope of article 6 of the ATAD.

By the way, for the difference between abuse and base erosion, Professor Frans Vanistendael describes as follows:

'… in European law there is an essential difference in the concept between the fight against abuse of tax law and the fight against tax base erosion. In the former concept economic objectives are important and loss of revenue in a particular tax jurisdiction has to be accepted as a consequence; in the latter concept loss of revenue through base erosion is always more important regardless of economic considerlations[44).'

I fully agree to his opinion. However, my opinion above remains effective, as the article 6 of the ATAD has a broad range of applicability by terms of that article.

IV. Result and Discussion

1. Result

This study of the Part III follows two following suggestions: (1) Article 6 of the ATAD, which is titled as a 'General anti-abuse rule', cannot work if debt push-downs are regarded as genuine. Therefore, a fixed ratio EBITDA rule on the amount of interest deduction is an appropriate measure against debt push-downs; (2) Article 15, paragraph 1, item (a) of the

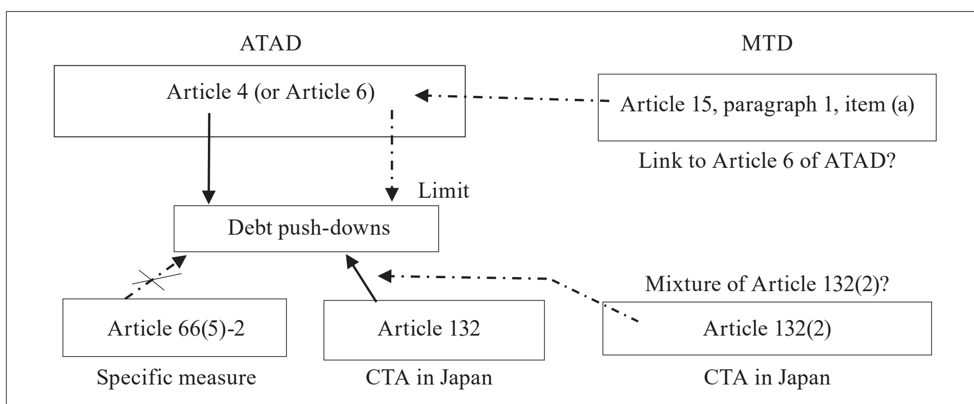

Figure 4 Compositions including Measures in the EU

MTD seems not to be discussed as a measure against debt push-downs.

Two suggestions above clearly show the problems hidden within the Universal Music case. Figure 4 shows compositions of applications of measures in the Universal Music case including measures in the EU.

The issue of the Universal Music case is the applicability of article 132, paragraph 1. This corresponds to the applicability of article 6 of the ATAD on Figure 4. This is, the first problem hidden within the Universal Music case is to deal with by article 132, paragraph 1 as much as a GAAR, which has limits against debt push-downs in the EU.

Also, the second problem hidden within the Universal Music case is to be mixed the unreasonableness requirement of article 132(2), paragraph 1 of the CTA, which is considered as a general anti-avoidance rule on corporate reorganizations, into the 'Unreasonableness Requirement'. This corresponds to be mixed article 15, paragraph 1, item (a) of the MTD into article 6 of the ATAD on Figure 4. However, as mentioned above, it seems that article 15, paragraph 1, item (a) of the MTD is not applicable to circumstances that fall within the scope of article 6 of the ATAD. Though it is certain that debt push-downs structure includes corporate reorganizations, article 15, paragraph 1, item (a) of the MTD seems not to be discussed as a measure against debt push-downs in the EU.

2. Discussion

Firstly, respond to the first suggestion above, it's worth noting that there are limits of applicability of article 132, paragraph 1 of the CTA, as the 'Unreasonableness Requirement' would not be able to work against debt push-downs, even if professor Nagato insists that the main feature of comparison between Japan and GAAR countries is whether there exists a statutory GAAR without limitation in scope[45]. A GAAR also has a limit of applicability against debt push-downs in the EU.

Secondary, respond to the second suggestion above, it's also worth noting that there is

fear of mixed application of article 132(2), paragraph 1 of the CTA substantially linked to article 132, paragraph 1 of the CTA. Basically, both article 132, paragraph 1 of the CTA and article 132(2), paragraph 1 of the CTA are applied in the particular field relatively. This is, the former is applied on family corporations and the latter is applied on corporate reorganizations. Next, though article 6 of the ATAD seems to be applicable to circumstances that fall within the scope of article 15, paragraph 1, item (a) of the MTD by terms of that article, article 132, paragraph 1 of the CTA does not has a same range of applicability as article 6 of the ATAD. Therefore, the mixed application above seems to be unfavorable.

V. Conclusions

From this study, it's worth noting that there are limits of applicability of article 132, paragraph 1, as the 'Unreasonableness Requirement' would not be able to work against debt push-downs. It's also worth noting that the unreasonableness requirement of article 132(2), paragraph 1 of the CTA seems to be mixed into the 'Unreasonableness Requirement' in the decision of the Universal Music case. It seems to be unfavorable as it means that article 132(2), paragraph 1 of the CTA is substantially linked to article 132, paragraph 1 of the CTA.

Finally, the Universal Music case was filed with the supreme court on July 7, 2020.

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Notes

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2) Hiroshi Kaneko, *Sozei Ho* [*Tax Law*] (23th edition), 137, 2019.
3) The term of the 'Unreasonableness Requirement' is referred in the decision of the Universal Music case.
4) Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market, OJ L193/1 (19 July 2016).
5) Council Directive 2009/133/EC of 19 October 2009 on the common system of taxation applicable to mergers, divisions, partial divisions, transfers assets and exchanges of shares concerning companies of different Member States and to the transfer of registered office of an SE or SCE between Member States, OJ L 310, 25 November 2009, 34-46.
6) Yoshihiro Masui and Yuko Miyazaki, *Kokusai Sozei Ho* [*Introdution to International Taxation*] (4th

edition), 231-233, 2019.

7) Article 66(4) of the *Act on Special Measures Considering Taxation*. This article was introduced at 1986.
8) Article 66(5) of the *Act on Special Measures Considering Taxation*. This article was introduced at 1992.
9) Article 66(5)-2 of the *Act on Special Measures Considering Taxation*. This article was introduced at 2012.
10) Minoru Nakazato et al., *Sozei Ho Gaisetsu* [*Treaties on Japanese Taxation*] (3th edition), 61 (Yoshihiro Masui), 2018.
11) For comments of the Universal Music case on the district court of Tokyo in Japan on June 27, 2019, *see* Shigetaka Nakamura, "*Debt Push-downs to Hojinzei Ho 132 Jo ni yoru Hinin～Universal Music Jiken (Tokyo Chisai Reiwa Gannen Rokugatsu 27 Nichi Hanketsu)～* [*Debt Push-downs and the Disallowance by Article 132 of Corporation Tax Act～The Universal Music Case (The Decision of the District Court of Tokyo in Japan on June 27, 2019)～*]", Westlaw Japan Case Column, 2020WLJCC007, May 16, 2020. Also, for comments of the Universal Music case on the high court of Tokyo in Japan on June 24, 2020, *see* Shigetaka Nakamura, "*Hojinzei Ho 132 Jo 1 Ko ni okeru Futousei Youken～Universal Music Jiken (Tokyo Kousai Reiwa 2 Nen Rokugatsu 24 Nichi Hanketsu)～*[*The Unreasonableness Requirement of Article 132, Article 1 of Corporation Tax Act～The Universal Music Case (The Decision of the High Court of Tokyo in Japan on June 24, 2020)～*]", Westlaw Japan Case Column, 2020WLJCC032, November 30, 2020. You can get each PDF for above-mentioned columns by accessing the link below, https://www.westlawjapan.com/column-law/2020/.
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18) Proposal for a COUNCIL DIRECTIVE laying down rules against tax avoidance practices that directly affect the functioning of the internal market, COM/2016/026 final - 2016/011 (CNS).
19) Proposal for a COUNCIL DIRECTIVE amending Directive (EU) 2016/1164 as regards hybrid mismatches with third countries, COM/2016/687 final - 2016/0339 (CNS).
20) The sixth Recital of the Preamble to the ATAD.

21) The eleventh Recital of the Preamble to the ATAD.
22) Article 6 (General anti-abuse rule)
1. For the purposes of calculating the corporate tax liability, a Member State shall ignore an arrangement or a series of arrangements which, having been put into place for the main purpose or one of the main purposes of obtaining a tax advantage that defeats the object or purpose of the applicable tax law, are not genuine having regard to all relevant facts and circumstances. An arrangement may comprise more than one step or part.
2. For the purposes of paragraph 1, an arrangement or a series thereof shall be regarded as non-genuine to the extent that they are not put into place for valid commercial reasons which reflect economic reality.
3. Where arrangements or a series thereof are ignored in accordance with paragraph 1, the tax liability shall be calculated in accordance with national law.
23) ECJ Task Force of the Confédération Fiscale Européenne, “EU REPORT”, Cahiers, Vol. 103a, 75, 2018.
24) Figure 3 is made by the present author, referring to ECJ Task Force of the Confédération Fiscale Européenne, *supra* note 23, 75-77.
25) ECJ Task Force of the Confédération Fiscale Européenne, *supra* note 23, 75.
26) *Id*.
27) *Id*.
28) *Id*.
29) *Id*.
30) Frederik Boulogne, *supra* note 16, 444.
31) Frederik Boulogne, *supra* note 16, 445.
32) *Id*.
33) Frederik Boulogne, *supra* note 16, 453.
34) *Id.*
35) *Id*.
36) *Id*.
37) For the legislative history of article 15, paragraph 1, item (a) and the introduction of related cases in the European Court of Justice, *See* Shigetaka Nakamura,“ *The Study for the Tax System of Cross-border Corporate Reorganizations—Focusing on the EU Merger Tax Directive for Considering the Future Direction in Japan—* ”, JOURNAL of ACCOUNTANCY, ECONOMICS and LAW, No.14, 19, 22-24, 2020.
38) ECJ Task Force of the Confédération Fiscale Européenne, *supra* note 23, 73.
39) Michael Lang et al., Introduction to European Tax Law on Direct Taxation (5th edition), 190 (Mathias Hofsätter/Daniela Hohenwarter-Myr), 2018.
40) Shu-Chien Chen describes as follows: ‘It is likely that in the future GAAR of EU law Directives in the field of direct taxation would follow the same pattern in ATAD, which also the development of case law.’ *See* Shu-Chien Chen, “Predicting the ‘unpredictable’ general anti-avoidance rule (GAAR) in EU tax law”, Intereulaweast, Vol. V(1), 105, 2018.

41) ATAD I means a proposal showed in *supra* note 18.
42) Article 7 (General anti-abuse rule) in the ATAD I
    1. Non-genuine arrangements or a series thereof carried out for the essential purpose of obtaining a tax advantage that defeats the object or purpose of the otherwise applicable tax provisions shall be ignored for the purposes of calculating the corporate tax liability. An arrangement may comprise more than one step or part.
    2. For the purposes of paragraph 1, an arrangement or a series thereof shall be regarded as non-genuine to the extent that they are not put into place for valid commercial reasons which reflect economic reality.
    3. Where arrangements or a series thereof are ignored in accordance with paragraph 1, the tax liability shall be calculated by reference to economic substance in accordance with national law.
43) The 'purpose requirement was broadened from "essential purpose" to "the main purpose or one of the main purposes" (Article 6(1)). This language seems to be influenced by the PPT provision in BEPS Action 6 and the revised PSD'. *See* Takayuki Nagato, *supra* note 15, 49.
44) Werner Haslehner et al., A GUIDE TO THE ANTI-TAX AVOIDANCE DIRECTIVE, 31 (Frans Vanistendael), 2020.
45) Takayuki Nagato, *supra* note 15, 64.