

SEMINAR E: Prifit methods and the arm's length principle —Japanese Experiences

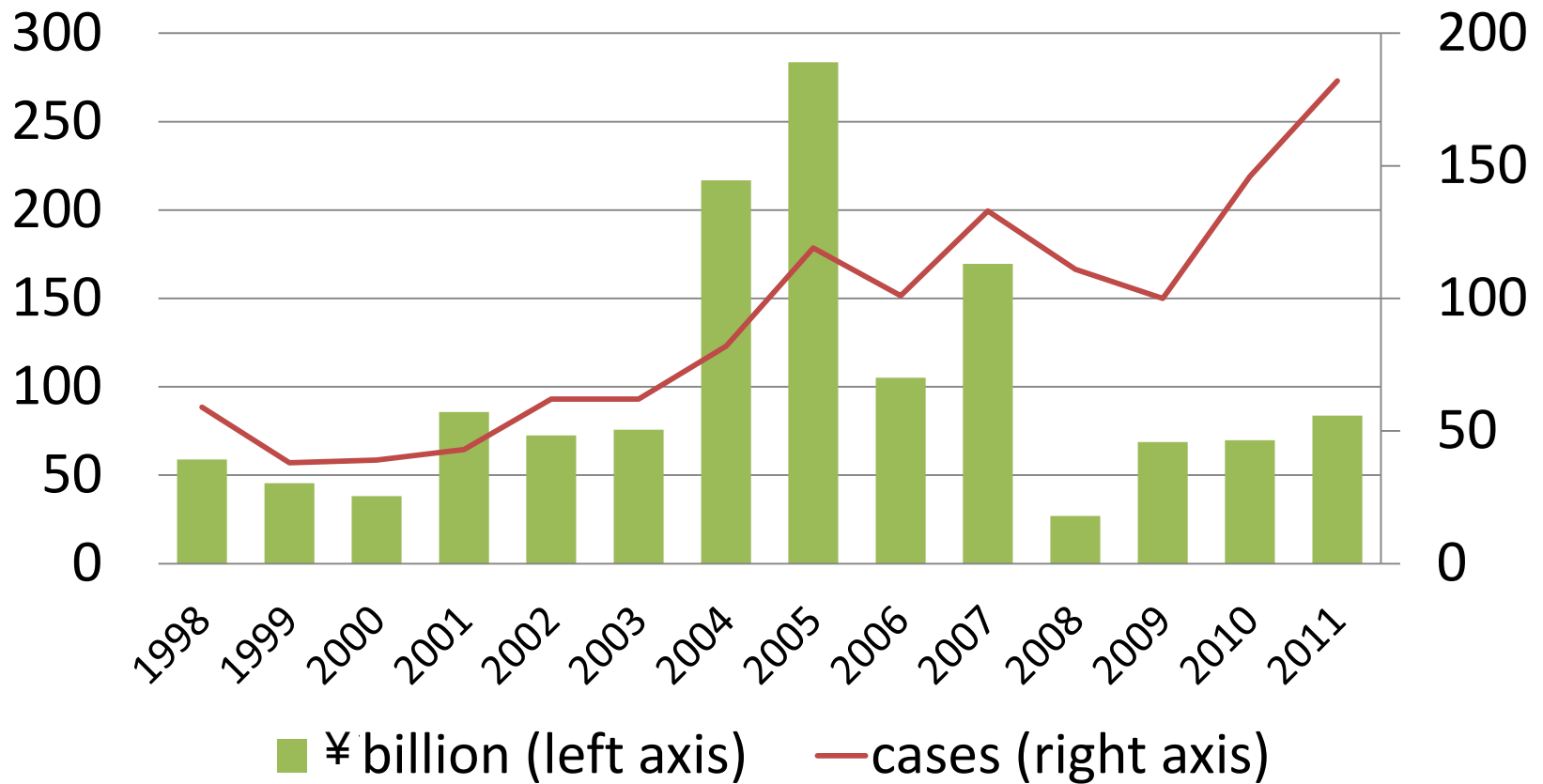


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Brief History

- 1986: TP provisions
 - ALP
 - Traditional methods(CUP, RPM, CP)/ other methods
- 2001: OECD 1995 TPG adoption by NTA
 - Increased TP challenges
- 2004: TNMM introduced
- 2011: OECD 2010 TPG: Shift to “most appropriate method”

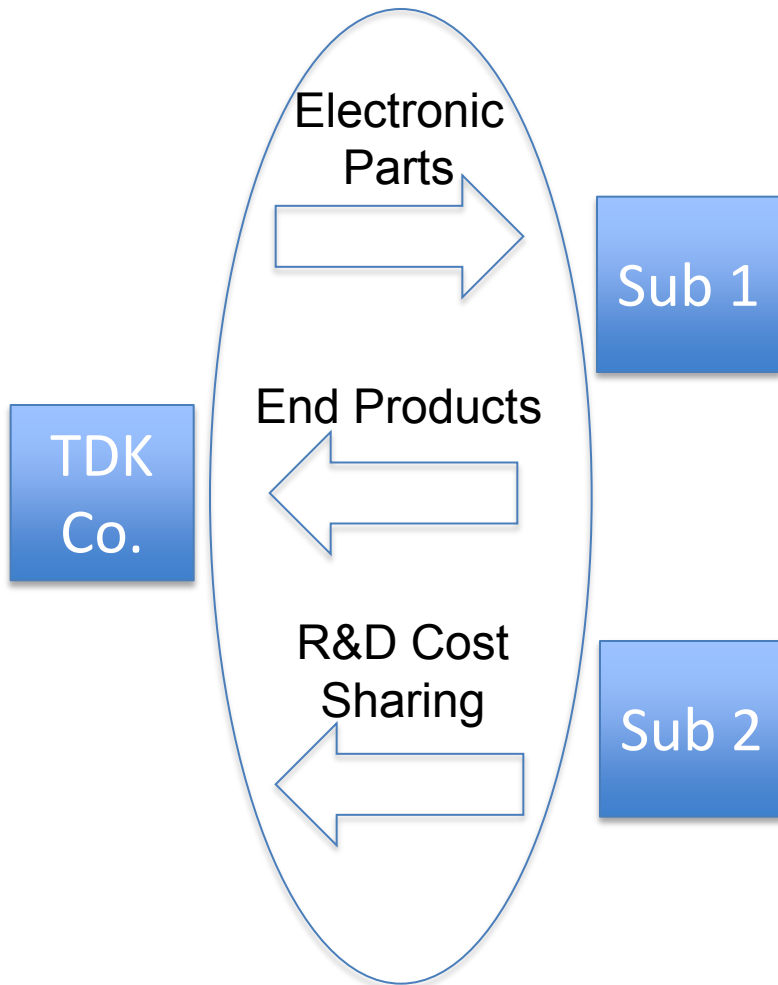
Examinations related to TP



Offshoring and Outsourcing

- From 2003, aggressive TP examination focusing on increased offshoring of Japanese MNEs.
 - Applications of (residual) PS method with emphasis on the role of HQ or intangibles
- Backlash against NTA's challenges
 - Clarification and Certainty were required by 2007 TP Report (METI)
 - Tax Tribunal Decisions to revoke assessment (TDK, Takeda)
 - Whose contribution?

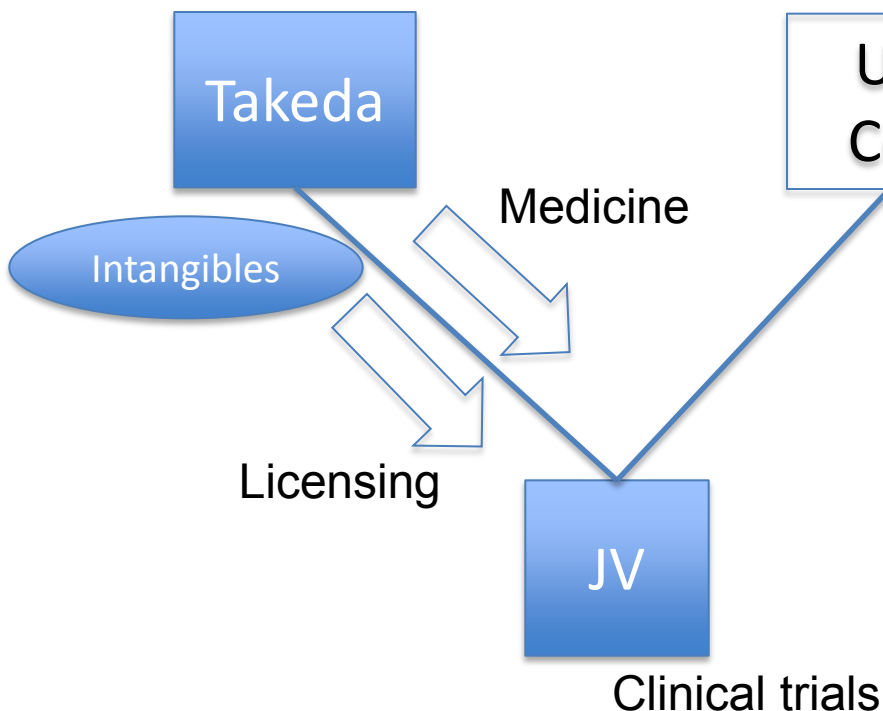
TDK Co. Case



Assessment amount of ¥21.3 billion
→ Tribunal reversed assessment of ¥14.1 billion

- Focusing on Role of Subs in creation of intangibles
 - Participating in making research project,
 - Providing information about the research to its clients
 - Bearing the expenses in advance, and
 - Taking a part of risks from the research project.

Takeda Pharmaceutical Case



Assessment of ¥122.3 billion was fully reversed by revocation of NTA and decision of NTT.

- 50-50 JV
- Tax Tribunal: Focusing on Role of JV in development of intangibles
 - making a decision on conducting clinical trials and
 - taking control of risks from the trials.

Recent changes in Japan

- Increased M&As overseas; Development of global value chains of Japanese MNEs
- 2007: Shift to territorial system with introduction of (partial) income approach to CFC rule
- More transfers of intangibles to foreign subs.

- 2011 Reform
 - Introduction of most appropriate method rule
 - Clarification of profit split method

A Japanese Perspective

- NTA is considering more application of profit methods under most appropriate method rule.
- However, it seems that Profit method should be “within” ALP, in consideration of controversies with developing countries.
- Improving APA process and tax risk assessment.