

2008

The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

*Presented and read a first time*

**International Tax Agreements  
Amendment Bill (No. 1) 2008**

**No.     , 2008**

*(Treasury)*

**A Bill for an Act to amend the *International Tax Agreements Act 1953*, and for related purposes**



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1     **A Bill for an Act to amend the *International Tax***  
2     ***Agreements Act 1953, and for related purposes***

3     The Parliament of Australia enacts:

4     **1 Short title**

5                     This Act may be cited as the *International Tax Agreements*  
6                     *Amendment Act (No. 1) 2008.*

7     **2 Commencement**

8                     This Act commences on the day on which it receives the Royal  
9                     Assent.

10    **3 Schedule(s)**

11                    Each Act that is specified in a Schedule to this Act is amended or  
12                    repealed as set out in the applicable items in the Schedule

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concerned, and any other item in a Schedule to this Act has effect according to its terms.

1  
2 **Schedule 1—International Tax Agreements Act**  
3 **1953**  
4

5 **1 Subsection 3(1) (at the end of paragraphs (a) to (cd) of the**  
6 **definition of *agreement*)**

7 Add “or”.

8 **2 Subsection 3(1) (at the end of the definition of *agreement*)**

9 Add:

10 ; or (f) the 1969 Japanese agreement.

11 **3 Subsection 3(1)**

12 Insert:

13 *the 1969 Japanese agreement* means the Agreement between the  
14 Government of the Commonwealth of Australia and the  
15 Government of Japan for the avoidance of double taxation and the  
16 prevention of fiscal evasion with respect to taxes on income and  
17 the protocol to that agreement, being the agreement and protocol  
18 that was signed at Canberra on 20 March 1969.

19 **4 Subsection 3(1)**

20 Insert:

21 *the 2008 Japanese convention* means the Convention between  
22 Australia and Japan for the avoidance of double taxation and the  
23 prevention of fiscal evasion with respect to taxes on income and  
24 the protocol to that convention, being the convention and protocol  
25 a copy of each of which in the English language is set out in  
26 Schedule 6.

27 **5 Subsection 3(1) (definition of *the Japanese Agreement*)**

28 Repeal the definition.

29 **6 Subsection 3(7)**

30 Omit “the Japanese Agreement”, substitute “the 1969 Japanese  
31 Agreement”.

32 **7 Subsection 3(7A)**

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1 Omit “the Japanese Agreement”, substitute “the 1969 Japanese  
2 Agreement”.

3 **8 Section 8**

4 Repeal the section, substitute:

5 **8 Convention with Japan**

6 (1) Subject to this Act, on and after the date of entry into force of the  
7 2008 Japanese convention, the provisions of the convention have  
8 the force of law according to their tenor.

9 (2) The provisions of the 1969 Japanese agreement, so far as those  
10 provisions affect Australian tax, continue to have the force of law  
11 in relation to tax in respect of income in relation to which the  
12 agreement remains effective.

13 Note: Paragraph 5 of Article 31 of the 2008 Japanese convention preserves  
14 the operation of Article 15 of the 1969 Japanese agreement (which  
15 provides that the income received in respect of teaching or conducting  
16 research by visiting professors and teachers is exempt from tax in the  
17 country where the teaching or research activities are conducted). This  
18 applies to individuals who are entitled to the benefit at the time when  
19 the 2008 Japanese convention enters into force. The benefit is  
20 preserved until the individual concerned would have ceased to be  
21 entitled to it under the 1969 Japanese agreement.

22 **9 Schedule 6**

23 Repeal the Schedule, substitute:

24 **Schedule 6—Convention between Australia**  
25 **and Japan for the avoidance of double**  
26 **taxation and the prevention of fiscal**  
27 **evasion with respect to taxes on**  
28 **income**

29 Note: See section 8.

30 Australia and Japan,  
31  
32  
33



1 Desiring to conclude a new Convention for the avoidance of double taxation  
2 and the prevention of fiscal evasion with respect to taxes on income,  
3  
4

5 Have agreed as follows:  
6

7 **Article 1**

8  
9 **PERSONS COVERED**

10 This Convention shall apply to persons who are residents of one or both of the  
11 Contracting States.  
12

13  
14 **Article 2**

15  
16 **TAXES COVERED**

17  
18 1. This Convention shall apply to the following existing taxes:

19  
20 *a)* in the case of Japan:

21  
22 *(i)* the income tax; and

23  
24 *(ii)* the corporation tax

25  
26 (hereinafter referred to as “Japanese tax”);

27  
28 *b)* in the case of Australia:

29  
30 *(i)* the income tax; and

31  
32 *(ii)* the petroleum resource rent tax

33  
34 (hereinafter referred to as “Australian tax”).

35  
36 2. This Convention shall apply also to any identical or substantially  
37 similar taxes that are imposed by Japan or under the federal law of Australia  
38 after the date of signature of the Convention in addition to, or in place of, the  
39 existing taxes referred to in paragraph 1. The competent authorities of the  
40 Contracting States shall notify each other of any significant changes that have  
41 been made in the law of their respective Contracting States relating to the taxes

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1 to which the Convention applies within a reasonable period of time after such  
2 changes.

3  
4 **Article 3**

5  
6 **GENERAL DEFINITIONS**

7  
8 1. For the purposes of this Convention, unless the context otherwise  
9 requires:

10  
11 *a)* the term “Japan”, when used in a geographical sense, means all the  
12 territory of Japan, including its territorial sea, in which the laws  
13 relating to Japanese tax are in force, and all the area beyond its  
14 territorial sea, including the seabed and subsoil thereof, over which  
15 Japan has sovereign rights in accordance with international law and in  
16 which the laws relating to Japanese tax are in force;

17  
18 *b)* the term “Australia”, when used in a geographical sense, excludes all  
19 external territories other than:

20  
21 *(i)* the Territory of Norfolk Island;

22  
23 *(ii)* the Territory of Christmas Island;

24  
25 *(iii)* the Territory of Cocos (Keeling) Islands;

26  
27 *(iv)* the Territory of Ashmore and Cartier Islands;

28  
29 *(v)* the Territory of Heard Island and McDonald Islands; and

30  
31 *(vi)* the Coral Sea Islands Territory,

32  
33 and includes any area adjacent to the territorial limits of Australia  
34 (including only the Territories specified in this subparagraph) in  
35 respect of which there is for the time being in force, consistently with  
36 international law, a law of Australia dealing with the exploration for  
37 or exploitation of any of the natural resources of the exclusive  
38 economic zone and the seabed and subsoil of the continental shelf;

39  
40 *c)* the terms “a Contracting State” and “the other Contracting State”  
41 mean Japan or Australia, as the context requires;

- 1  
2     *d)*   the term “tax” means Japanese tax or Australian tax, as the context  
3           requires;  
4  
5     *e)*   the term “person” includes an individual, a company and any other  
6           body of persons;  
7  
8     *f)*   the term “company” means any body corporate or any entity that is  
9           treated as a company or body corporate for tax purposes;  
10  
11    *g)*   the term “enterprise” applies to the carrying on of any business;  
12  
13    *h)*   the terms “enterprise of a Contracting State” and “enterprise of the  
14           other Contracting State” mean respectively an enterprise carried on by  
15           a resident of a Contracting State and an enterprise carried on by a  
16           resident of the other Contracting State;  
17  
18    *i)*   the term “international traffic” means any transport by a ship or  
19           aircraft operated by an enterprise of a Contracting State, except when  
20           the ship or aircraft is operated solely between places in the other  
21           Contracting State;  
22  
23    *j)*   the term “national”, in relation to a Contracting State, means:  
24  
25        *(i)*    any individual possessing the nationality or citizenship of that  
26           Contracting State; and  
27  
28        *(ii)*   any juridical or legal person created or organised under the  
29           law of that Contracting State and any organisation without  
30           juridical or legal personality treated for the purposes of that  
31           Contracting State’s tax as a juridical or legal person created or  
32           organised under the law of that Contracting State;  
33  
34    *k)*   the term “competent authority” means:  
35  
36        *(i)*    in the case of Japan, the Minister of Finance or an authorised  
37           representative of the Minister of Finance; and  
38  
39        *(ii)*   in the case of Australia, the Commissioner of Taxation or an  
40           authorised representative of the Commissioner of Taxation;  
41           and
-

1  
2 l) the term “business” includes the performance of professional services  
3 and of other activities of an independent character.  
4

5 2. As regards the application of this Convention at any time by a  
6 Contracting State, any term not defined therein shall, unless the context  
7 otherwise requires, have the meaning that it has at that time under the law of  
8 that Contracting State concerning the taxes to which the Convention applies,  
9 any meaning under the applicable tax law of that Contracting State prevailing  
10 over a meaning given to the term under other law of that Contracting State.  
11

#### 12 **Article 4**

#### 13 **RESIDENT**

14  
15  
16 1. For the purposes of this Convention, the term “resident of a  
17 Contracting State” means:

18  
19 a) in the case of Japan, any person who, under the laws of Japan, is liable  
20 to tax therein by reason of the person’s domicile, residence, place of  
21 head or main office, or any other criterion of a similar nature; and  
22

23 b) in the case of Australia, a person who is a resident of Australia for the  
24 purposes of Australian tax.  
25

26 The Government of a Contracting State or a political subdivision or local  
27 authority thereof is also a resident of that Contracting State for the purposes of  
28 the Convention. A person is not a resident of a Contracting State for the  
29 purposes of the Convention if the person is liable to tax in that Contracting State  
30 in respect only of income from sources in that Contracting State.  
31

32 2. Where by reason of the provisions of paragraph 1 an individual is a  
33 resident of both Contracting States, then the individual’s status shall be  
34 determined as follows:

35  
36 a) the individual shall be deemed to be a resident only of the Contracting  
37 State in which the individual has a permanent home available to that  
38 individual; if that individual has a permanent home available to that  
39 individual in both Contracting States, or in neither of them, that  
40 individual shall be deemed to be a resident only of the Contracting

- 1 State with which the individual's personal and economic relations are  
2 closer (centre of vital interests);  
3
- 4 *b)* if the Contracting State in which the individual's centre of vital  
5 interests is situated cannot be determined, the individual shall be  
6 deemed to be a resident only of the Contracting State of which that  
7 individual is a national;  
8
- 9 *c)* if the individual is a national of both Contracting States or of neither  
10 of them, the competent authorities of the Contracting States shall  
11 endeavour to resolve the question by mutual agreement.  
12
- 13 3. Where by reason of the provisions of paragraph 1 a person other than  
14 an individual is a resident of both Contracting States, then the competent  
15 authorities of the Contracting States shall endeavour to determine by mutual  
16 agreement the Contracting State of which that person shall be deemed to be a  
17 resident for the purposes of this Convention, having regard to the place of its  
18 head or main office, its place of effective management and any other relevant  
19 factors.  
20
- 21 4. In the absence of a mutual agreement under subparagraph *c)* of  
22 paragraph 2 or paragraph 3 a person who is a resident of both Contracting States  
23 by reason of the provisions of paragraph 1 shall not be considered a resident of  
24 either Contracting State for the purposes of claiming any benefits provided by  
25 this Convention, except those provided by Articles 26 and 27.  
26
- 27 5. For the purposes of applying this Convention:  
28
- 29 *a)* an item of income, profits or gains:  
30
- 31 *(i)* derived from a Contracting State through an entity that is  
32 organised in the other Contracting State; and  
33
- 34 *(ii)* treated as the income, profits or gains of the beneficiaries,  
35 members or participants of that entity under the tax law of  
36 that other Contracting State,  
37
- 38 shall be eligible for the benefits of the Convention that would be  
39 granted if it were directly derived by a beneficiary, member or  
40 participant of that entity who is a resident of that other Contracting  
41 State, to the extent that such beneficiaries, members or participants
-

1 are residents of that other Contracting State and satisfy any other  
2 conditions specified in the Convention, without regard to whether the  
3 income, profits or gains are treated as the income, profits or gains of  
4 such beneficiaries, members or participants under the tax law of the  
5 first-mentioned Contracting State.

6  
7 *b)* an item of income, profits or gains:

8  
9 *(i)* derived from a Contracting State through an entity that is  
10 organised in the other Contracting State; and

11  
12 *(ii)* treated as the income, profits or gains of that entity under the  
13 tax law of that other Contracting State,

14  
15 shall be eligible for the benefits of the Convention that would be  
16 granted to a resident of that other Contracting State, without regard to  
17 whether the income, profits or gains are treated as the income, profits  
18 or gains of the entity under the tax law of the first-mentioned  
19 Contracting State, if such entity is a resident of that other Contracting  
20 State and satisfies any other conditions specified in the Convention.

21  
22 *c)* an item of income, profits or gains:

23  
24 *(i)* derived from a Contracting State through an entity that is  
25 organised in a state other than the Contracting States; and

26  
27 *(ii)* treated as the income, profits or gains of the beneficiaries,  
28 members or participants of that entity under the tax law of the  
29 other Contracting State,

30  
31 shall be eligible for the benefits of the Convention that would be  
32 granted if it were directly derived by a beneficiary, member or  
33 participant of that entity who is a resident of that other Contracting  
34 State, to the extent that such beneficiaries, members or participants  
35 are residents of that other Contracting State and satisfy any other  
36 conditions specified in the Convention, without regard to whether the  
37 income, profits or gains are treated as the income, profits or gains of  
38 such beneficiaries, members or participants under the tax law of the  
39 first-mentioned Contracting State or such state.

40  
41 *d)* an item of income, profits or gains:

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(i) derived from a Contracting State through an entity that is organised in a state other than the Contracting States; and

(ii) treated as the income, profits or gains of that entity under the tax law of the other Contracting State,

shall not be eligible for the benefits of the Convention.

e) an item of income, profits or gains:

(i) derived from a Contracting State through an entity that is organised in that Contracting State; and

(ii) treated as the income, profits or gains of that entity under the tax law of the other Contracting State,

shall not be eligible for the benefits of the Convention.

## **Article 5**

### **PERMANENT ESTABLISHMENT**

1. For the purposes of this Convention, the term “permanent establishment” means a fixed place of business through which the business of the enterprise is wholly or partly carried on.

2. The term “permanent establishment” includes especially:

a) a place of management;

b) a branch;

c) an office;

d) a factory;

e) a workshop;

f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources; and

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g) an agricultural, pastoral or forestry property.

3. A building site or construction or installation project constitutes a permanent establishment only if it lasts more than 12 months.

4. Notwithstanding the preceding paragraphs of this Article, where an enterprise of a Contracting State:

a) undertakes supervisory or consultancy activities in the other Contracting State in connection with a building site or construction or installation project which is being undertaken in that other Contracting State, and those activities last more than 12 months;

b) carries on activities (including the operation of substantial equipment) in the other Contracting State in the exploration for or exploitation of natural resources situated in that other Contracting State for a period or periods exceeding in the aggregate 90 days in any 12 month period; or

c) operates substantial equipment in the other Contracting State (other than as provided in subparagraph b)) for a period or periods exceeding in the aggregate 183 days in any 12 month period,

such activities shall be deemed to be performed through a permanent establishment that the enterprise has in that other Contracting State.

5. a) The duration of activities under paragraphs 3 and 4 shall be determined by aggregating the periods during which activities are carried on in a Contracting State by associated enterprises provided that the activities carried on in that Contracting State by an enterprise are connected with the activities carried on in that Contracting State by its associated enterprise.

b) The period during which two or more associated enterprises are carrying on concurrent activities shall be counted only once for the purpose of determining the duration of activities.

c) For the purposes of this Article, an enterprise shall be deemed to be associated with another enterprise if:



- 1 (i) an enterprise participates directly or indirectly in the  
 2 management, control or capital of the other enterprise; or  
 3  
 4 (ii) the same persons participate directly or indirectly in the  
 5 management, control or capital of the enterprises.  
 6

7 6. Notwithstanding the preceding paragraphs of this Article, an enterprise  
 8 shall not be deemed to have a permanent establishment merely by reason of:  
 9

- 10 a) the use of facilities solely for the purpose of storage, display or  
 11 delivery of goods or merchandise belonging to the enterprise;  
 12  
 13 b) the maintenance of a stock of goods or merchandise belonging to the  
 14 enterprise solely for the purpose of storage, display or delivery;  
 15  
 16 c) the maintenance of a stock of goods or merchandise belonging to the  
 17 enterprise solely for the purpose of processing by another enterprise;  
 18  
 19 d) the maintenance of a fixed place of business solely for the purpose of  
 20 purchasing goods or merchandise or of collecting information, for the  
 21 enterprise; or  
 22  
 23 e) the maintenance of a fixed place of business solely for the purpose of  
 24 carrying on, for the enterprise, any other activity of a preparatory or  
 25 auxiliary character.  
 26

27 7. Notwithstanding the provisions of paragraphs 1 and 2, where a  
 28 person—other than an agent of an independent status to whom the provisions of  
 29 paragraph 8 apply—is acting on behalf of an enterprise and:  
 30

- 31 a) has, and habitually exercises, in a Contracting State an authority to  
 32 substantially negotiate on behalf of or conclude contracts in the name  
 33 of the enterprise; or  
 34  
 35 b) manufactures or processes in a Contracting State for the enterprise  
 36 goods or merchandise belonging to the enterprise,  
 37

38 that enterprise shall be deemed to have a permanent establishment in that  
 39 Contracting State in respect of any activities which that person undertakes for  
 40 that enterprise, unless the activities are limited to those mentioned in paragraph

1 6 which, if exercised through a fixed place of business, would not make this  
2 fixed place of business a permanent establishment under paragraph 1.

3  
4 8. An enterprise shall not be deemed to have a permanent establishment  
5 in a Contracting State merely because it carries on business in that Contracting  
6 State through a person who is a broker, general commission agent or any other  
7 agent of an independent status, provided that the person is acting in the ordinary  
8 course of the person's business as such a broker or agent.

9  
10 9. The fact that a company which is a resident of a Contracting State  
11 controls or is controlled by a company which is a resident of the other  
12 Contracting State, or which carries on business in that other Contracting State  
13 (whether through a permanent establishment or otherwise), shall not of itself  
14 constitute either company a permanent establishment of the other.

15  
16 10. The principles set forth in the preceding paragraphs of this Article  
17 shall be applied in determining for the purposes of paragraph 7 of Article 11 and  
18 paragraph 5 of Article 12 whether there is a permanent establishment in a state  
19 other than the Contracting States, and whether an enterprise, not being an  
20 enterprise of either of the Contracting States, has a permanent establishment in a  
21 Contracting State.

## 22 **Article 6**

### 23 **INCOME FROM REAL PROPERTY**

24  
25  
26  
27 1. Income derived by a resident of a Contracting State from real property  
28 situated in the other Contracting State may be taxed in that other Contracting  
29 State.

30  
31 2. The term "real property" shall have the meaning which it has under  
32 the law of the Contracting State in which the property in question is situated.  
33 The term shall in any case include:

- 34  
35 a) a lease of land and any other interest in or over land, whether  
36 improved or not;  
37  
38 b) property accessory to real property;  
39  
40 c) rights to which the provisions of general law respecting landed  
41 property apply;
-

- 1  
2       d) usufruct of real property;  
3  
4       e) rights to explore for mineral, oil or gas deposits or other natural  
5       resources, and a right to work those deposits or resources; and  
6  
7       f) rights to receive variable or fixed payments either as consideration for  
8       or in respect of the exploitation of, or the right to explore for or  
9       exploit, mineral, oil or gas deposits, quarries or other places of  
10      extraction or exploitation of natural resources.

11  
12 Ships and aircraft shall not be regarded as real property.

13  
14 3. Any interest or right referred to in paragraph 2 shall be regarded as  
15 situated where the land, mineral, oil or gas deposits, quarries or natural  
16 resources, as the case may be, are situated or where the exploration may take  
17 place.

18  
19 4. The provisions of paragraph 1 shall apply to income derived from the  
20 direct use, letting, or use in any other form of real property.

21  
22 5. The provisions of paragraphs 1, 3 and 4 shall also apply to the income  
23 from real property of an enterprise.

24  
25 **Article 7**

26  
27 **BUSINESS PROFITS**

28  
29 1. The profits of an enterprise of a Contracting State shall be taxable only  
30 in that Contracting State unless the enterprise carries on business in the other  
31 Contracting State through a permanent establishment situated therein. If the  
32 enterprise carries on business as aforesaid, the profits of the enterprise may be  
33 taxed in that other Contracting State but only so much of them as is attributable  
34 to that permanent establishment.

35  
36 2. Subject to the provisions of paragraph 3, where an enterprise of a  
37 Contracting State carries on business in the other Contracting State through a  
38 permanent establishment situated therein, there shall in each Contracting State  
39 be attributed to that permanent establishment the profits which it might be  
40 expected to make if it were a distinct and separate enterprise engaged in the  
41 same or similar activities under the same or similar conditions and dealing

1 wholly independently with the enterprise of which it is a permanent  
2 establishment or with other enterprises with which it deals.

3  
4 3. In determining the profits of a permanent establishment, there shall be  
5 allowed as deductions expenses of the enterprise, being expenses which are  
6 incurred for the purposes of the permanent establishment, including executive  
7 and general administrative expenses so incurred, and which would be deductible  
8 if the permanent establishment were an independent enterprise which paid those  
9 expenses, whether incurred in the Contracting State in which the permanent  
10 establishment is situated or elsewhere.

11  
12 4. Nothing in this Article shall affect the application of any law of a  
13 Contracting State relating to the determination of the tax liability of a person in  
14 cases where the information available to the competent authority of that  
15 Contracting State is inadequate to determine the profits to be attributed to a  
16 permanent establishment, provided that, on the basis of the available  
17 information, the determination of the profits of the permanent establishment is  
18 consistent with the principles stated in this Article.

19  
20 5. No profits shall be attributed to a permanent establishment by reason  
21 of the mere purchase by that permanent establishment of goods or merchandise  
22 for the enterprise.

23  
24 6. For the purposes of the preceding paragraphs of this Article, the  
25 profits to be attributed to the permanent establishment shall be determined by  
26 the same method year by year unless there is good and sufficient reason to the  
27 contrary.

28  
29 7. Where profits include items of income or gains which are dealt with  
30 separately in other Articles of this Convention, then the provisions of those  
31 Articles shall not be affected by the provisions of this Article.

32  
33 8. Nothing in this Article shall affect the application of any law of a  
34 Contracting State relating to tax imposed on profits from insurance with a  
35 person other than a resident of that Contracting State.

36  
37 9. Where:

- 38  
39 a) a resident of a Contracting State is beneficially entitled, whether  
40 directly or through one or more interposed trusts, to a share of the  
41 profits derived from business carried on in the other Contracting State

1 by the trustee of a trust (other than a trust which is treated as a  
2 company for tax purposes) in its capacity as trustee; and

- 3  
4 b) in relation to the carrying on of the business, that trustee, in  
5 accordance with the principles stated in Article 5, has a permanent  
6 establishment in that other Contracting State,

7  
8 the business carried on by the trustee shall be deemed to be a business carried  
9 on in that other Contracting State by that resident through a permanent  
10 establishment situated therein and the share of the profits shall be attributed to  
11 that permanent establishment.

12  
13 **Article 8**

14  
15 **SHIPPING AND AIR TRANSPORT**

16  
17 1. Profits of an enterprise of a Contracting State derived from the  
18 operation of ships or aircraft in international traffic shall be taxable only in that  
19 Contracting State.

20  
21 2. Notwithstanding the provisions of Article 2, provided that no political  
22 subdivision or local authority of Australia levies a tax similar to the local  
23 inhabitant taxes or the enterprise tax in Japan in respect of the operation of ships  
24 or aircraft in international traffic carried on by an enterprise of Japan, an  
25 enterprise of Australia shall be exempt from the local inhabitant taxes and the  
26 enterprise tax in Japan in respect of the operation of ships or aircraft in  
27 international traffic.

28  
29 3. Notwithstanding the provisions of paragraph 1, profits of an enterprise  
30 of a Contracting State derived from the operation of ships or aircraft may be  
31 taxed in the other Contracting State to the extent that they are profits derived  
32 directly or indirectly from the operation of ships or aircraft confined solely to  
33 places in that other Contracting State.

34  
35 4. For the purposes of this Article, profits derived from the carriage by  
36 ships or aircraft of passengers, livestock, mail, goods or merchandise which are  
37 shipped in a Contracting State and are discharged at a place in that Contracting  
38 State shall be treated as profits from the operation of ships or aircraft confined  
39 solely to places in that Contracting State.  
40

1 5. The provisions of the preceding paragraphs of this Article shall also  
2 apply to profits from the operation of ships or aircraft derived through  
3 participation in a pool service, joint business or other profit sharing  
4 arrangement.

5  
6 **Article 9**

7  
8 **ASSOCIATED ENTERPRISES**

9  
10 1. Where:

- 11  
12 a) an enterprise of a Contracting State participates directly or indirectly  
13 in the management, control or capital of an enterprise of the other  
14 Contracting State; or  
15  
16 b) the same persons participate directly or indirectly in the management,  
17 control or capital of an enterprise of a Contracting State and an  
18 enterprise of the other Contracting State,

19  
20 and in either case conditions operate between the two enterprises in their  
21 commercial or financial relations which differ from those which might be  
22 expected to operate between independent enterprises dealing wholly  
23 independently with one another, then any profits which, but for those  
24 conditions, might have been expected to have accrued to one of the enterprises,  
25 but, by reason of those conditions, have not so accrued, may be included in the  
26 profits of that enterprise and taxed accordingly.

27  
28 2. Nothing in this Article, other than paragraph 4, shall affect the  
29 application of any law of a Contracting State relating to the determination of the  
30 tax liability of a person in cases where the information available to the  
31 competent authority of that Contracting State is inadequate to determine the  
32 profits accruing to an enterprise, provided that, on the basis of the available  
33 information, the determination of that tax liability of the enterprise is consistent  
34 with the principles stated in paragraph 1.

35  
36 3. Where a Contracting State includes, in accordance with the provisions  
37 of paragraph 1 or 2, in the profits of an enterprise of that Contracting State - and  
38 taxes accordingly - profits on which an enterprise of the other Contracting State  
39 has been charged to tax in that other Contracting State and where the competent  
40 authorities of the Contracting States agree, upon consultation, that all or part of  
41 the profits so included are profits which might have been expected to have

1 accrued to the enterprise of the first-mentioned Contracting State if the  
2 conditions operative between the two enterprises had been those which might  
3 have been expected to have operated between independent enterprises dealing  
4 wholly independently with one another, then the other Contracting State shall  
5 make an appropriate adjustment to the amount of the tax charged therein on  
6 those agreed profits. In determining such adjustment, due regard shall be had to  
7 the other provisions of this Convention.

8  
9 4. Notwithstanding the provisions of paragraphs 1 and 2, a Contracting  
10 State shall not change the profits of an enterprise of that Contracting State in the  
11 circumstances referred to in those paragraphs, if an enquiry into the profits of  
12 that enterprise is not initiated within seven years from the end of the taxable  
13 year in which the profits that would be subject to such change, but for the  
14 conditions referred to in those paragraphs, might have been expected to have  
15 accrued to that enterprise. The provisions of this paragraph shall not apply in  
16 the case of fraud or wilful default or if the inability to initiate an enquiry within  
17 the prescribed period is attributable to the actions or inaction of that enterprise.

18  
19 **Article 10**

20  
21 **DIVIDENDS**

22  
23 1. Dividends paid by a company which is a resident of a Contracting  
24 State for the purposes of its tax, being dividends beneficially owned by a  
25 resident of the other Contracting State, may be taxed in that other Contracting  
26 State.

27  
28 2. However, such dividends may also be taxed in the Contracting State of  
29 which the company paying the dividends is a resident for the purposes of its tax  
30 and according to the law of that Contracting State, but the tax so charged shall  
31 not exceed:

32  
33 a) 5 per cent of the gross amount of the dividends if the beneficial owner  
34 of the dividends is a company which owns directly shares representing  
35 at least 10 per cent of the voting power of the company paying the  
36 dividends;

37  
38 b) 10 per cent of the gross amount of the dividends in all other cases.

39  
40 3. Notwithstanding the provisions of paragraph 2, dividends shall not be taxed  
41 in the Contracting State of which the company paying the dividends is a

---

1 resident for the purposes of its tax if the beneficial owner of the dividends is a  
2 company that is a resident of the other Contracting State and that has owned  
3 directly shares representing at least 80 per cent of the voting power of the  
4 company paying the dividends for the 12 month period ending on the date on  
5 which entitlement to the dividends is determined and the company that is the  
6 beneficial owner of the dividends:

- 7
- 8 a) is a qualified person by reason of the provisions of subparagraph c) of  
9 paragraph 2 of Article 23;
  - 10 b) has at least 50 per cent of the aggregate vote and value of its shares  
11 owned directly or indirectly by five or fewer companies referred to in  
12 subparagraph a); or
  - 13 c) is granted benefits with respect to those dividends under paragraph 5  
14 of Article 23.

15  
16  
17  
18 4. Notwithstanding the provisions of paragraphs 2 and 3, dividends paid by a  
19 company that is a resident of Japan and that is entitled to a deduction for  
20 dividends paid to its beneficiaries in computing its taxable income in Japan,  
21 being dividends beneficially owned by a resident of Australia, may also be  
22 taxed in Japan according to the law of Japan, but the tax so charged shall not  
23 exceed:

- 24
- 25 a) 15 per cent of the gross amount of the dividends if more than 50  
26 percent of the assets of such company consist, directly or indirectly, of  
27 real property situated in Japan;
  - 28 b) 10 per cent of the gross amount of the dividends in all other cases.

29  
30  
31 5. The provisions of paragraphs 2, 3 and 4 shall not affect the taxation of the  
32 company in respect of the profits out of which the dividends are paid.

33  
34 6. The term “dividends” as used in this Article means income from shares or  
35 other rights, not being debt-claims, participating in profits, as well as income or  
36 other distributions which are subjected to the same taxation treatment as income  
37 from shares by the law of the Contracting State of which the company making  
38 the distribution is a resident for the purposes of its tax.  
39



- 
- 1 7. a) Distributions of income, profits or gains by a Real Estate Investment  
2 Trust (hereinafter referred to as a “REIT”), being distributions  
3 beneficially owned by a resident of Japan, may be taxed in Japan.  
4
- 5 b) However, such distributions may also be taxed in Australia according  
6 to the law of Australia, but the tax so charged shall not exceed 15 per  
7 cent of the gross amount of the distributions if the beneficial owner of  
8 the distributions is a resident of Japan other than a beneficial owner of  
9 the distributions which holds, or has held at any time in the 12 month  
10 period preceding the date on which the distributions are made, directly  
11 or indirectly, capital that represents at least 10 percent of the value of  
12 all the capital in the REIT.  
13
- 14 c) For the purposes of this paragraph, the term “Real Estate Investment  
15 Trust” means a managed investment trust created or organised under  
16 the laws of Australia which carries on a business consisting of  
17 investment, directly or indirectly, in real property for the main purpose  
18 of deriving rent.  
19
- 20 8. The provisions of paragraphs 1, 2, 3, 4 and 7 shall not apply if the  
21 beneficial owner of the dividends or distributions, being a resident of a  
22 Contracting State, carries on business in the other Contracting State of which  
23 the company paying the dividends is a resident for the purposes of its tax (or, in  
24 the case of a REIT to which paragraph 7 applies, in Australia) through a  
25 permanent establishment situated therein and the holding in respect of which the  
26 dividends or distributions are paid is effectively connected with such permanent  
27 establishment. In such case the provisions of Article 7 shall apply.  
28
- 29 9. Where a company which is a resident of a Contracting State derives profits  
30 or income from the other Contracting State, that other Contracting State may  
31 not impose any tax on the dividends paid by the company — being dividends  
32 beneficially owned by a person who is not a resident of that other Contracting  
33 State — except insofar as the holding in respect of which such dividends are  
34 paid is effectively connected with a permanent establishment situated in that  
35 other Contracting State, nor subject the company’s undistributed profits to a tax  
36 on the company’s undistributed profits, even if the dividends paid or the  
37 undistributed profits consist wholly or partly of profits or income arising in that  
38 other Contracting State. However, in the case of dividends paid by a company  
39 which is deemed to be a resident only of a Contracting State by reason of the  
40 provisions of paragraph 3 of Article 4, the other Contracting State may tax such  
41 dividends to the extent that they are paid out of profits or income arising in that
-

1 other Contracting State and, in the case of dividends beneficially owned by a  
2 resident of the first-mentioned Contracting State, according to the provisions of  
3 paragraphs 2 or 3.

4  
5 10. A resident of a Contracting State shall not be considered the beneficial  
6 owner of the dividends paid by a resident of the other Contracting State for the  
7 purposes of its tax in respect of preferred shares or other similar interests if such  
8 preferred shares or other similar interests might not have been expected to have  
9 been established or acquired unless a person:

10  
11 a) that is not entitled to benefits with respect to dividends paid by a  
12 resident of that other Contracting State which are equivalent to, or  
13 more favourable than, those available under this Convention to a  
14 resident of the first-mentioned Contracting State; and

15  
16 b) that is not a resident of either Contracting State,

17  
18 owned equivalent preferred shares or other similar interests in the  
19 first-mentioned resident.

20  
21 11. No relief shall be available under this Article if it was the main purpose or  
22 one of the main purposes of any person concerned with the assignment of the  
23 dividends or distributions, the creation or assignment of the shares or other  
24 rights in respect of which the dividends or distributions are paid, or the  
25 establishment, acquisition or maintenance of the company which is the  
26 beneficial owner of the dividends or distributions or the conduct of its  
27 operations to take advantage of this Article.

## 28 29 **Article 11**

### 30 31 **INTEREST**

32  
33 1. Interest arising in a Contracting State and beneficially owned by a  
34 resident of the other Contracting State may be taxed in that other Contracting  
35 State.

36  
37 2. However, such interest may also be taxed in the Contracting State in  
38 which it arises and according to the law of that Contracting State, but the tax so  
39 charged shall not exceed 10 per cent of the gross amount of the interest.

---

1 3. Notwithstanding the provisions of paragraph 2, interest arising in a  
2 Contracting State and beneficially owned by a resident of the other Contracting  
3 State shall not be taxed in the first-mentioned Contracting State if:

- 4
- 5 a) the interest is derived by a Contracting State or a political subdivision  
6 or local authority thereof, by any other body exercising governmental  
7 functions in a Contracting State, or by the Bank of Japan or the  
8 Reserve Bank of Australia;
- 9
- 10 b) the interest is derived by a financial institution which is unrelated to  
11 and dealing wholly independently with the payer. For the purpose of  
12 this Article, the term “financial institution” means a bank or other  
13 enterprise substantially deriving its profits by raising debt finance in  
14 the financial markets or taking deposits at interest and by using those  
15 funds in carrying on a business of providing finance; or
- 16
- 17 c) the interest is derived by:
- 18
- 19 (i) in the case of Japan, the Japan Bank for International  
20 Cooperation, or the Nippon Export and Investment Insurance;
- 21
- 22 (ii) in the case of Australia, the Export Finance and Insurance  
23 Corporation, or a public authority that manages the  
24 investments of the Future Fund; and
- 25
- 26 (iii) any similar institution as may be agreed upon from time to  
27 time between the Governments of the Contracting States  
28 through an exchange of diplomatic notes.
- 29

30 4. Notwithstanding the provisions of paragraph 3, interest referred to in  
31 subparagraph *b*) of that paragraph may be taxed in the Contracting State in  
32 which it arises at a rate not exceeding 10 per cent of the gross amount of the  
33 interest if the interest is paid as part of an arrangement involving back-to-back  
34 loans or other arrangement that is economically equivalent and intended to have  
35 a similar effect to an arrangement involving back-to-back loans.

36

37 5. The term “interest” as used in this Article means income from  
38 debt-claims of every kind, whether or not secured by mortgage and whether or  
39 not carrying a right to participate in the debtor’s profits, and in particular,  
40 interest from government securities and interest from bonds or debentures,  
41 including premiums and prizes attaching to such securities, bonds or debentures,

---

1 and all other income that is subjected to the same taxation treatment as income  
2 from money lent by the tax law of the Contracting State in which the income  
3 arises. Income dealt with in Article 10 shall not be regarded as interest for the  
4 purposes of this Convention.

5  
6 6. The provisions of paragraphs 1 and 2, subparagraph *b*) of paragraph 3  
7 and paragraph 4 shall not apply if the beneficial owner of the interest, being a  
8 resident of a Contracting State, carries on business in the other Contracting  
9 State in which the interest arises through a permanent establishment situated  
10 therein and the debt-claims or other rights in respect of which the interest is paid  
11 is effectively connected with such permanent establishment. In such case the  
12 provisions of Article 7 shall apply.

13  
14 7. Interest shall be deemed to arise in a Contracting State when the payer  
15 is a resident of that Contracting State for the purposes of its tax. Where,  
16 however, the person paying interest, whether such person is a resident of a  
17 Contracting State or not, has in a Contracting State or a state other than the  
18 Contracting States a permanent establishment in connection with which the  
19 indebtedness on which the interest is paid were incurred, and such interest is  
20 borne by such permanent establishment, then:

- 21  
22 *a*) if the permanent establishment is situated in a Contracting State, such  
23 interest shall be deemed to arise in that Contracting State; and  
24  
25 *b*) if the permanent establishment is situated in a state other than the  
26 Contracting States, such interest shall not be deemed to arise in either  
27 Contracting State.

28  
29 8. Where, by reason of a special relationship between the payer and the  
30 beneficial owner of the interest, or between both of them and some other  
31 person, the amount of the interest, having regard to the debt-claims or other  
32 rights for which it is paid, exceeds the amount which might have been expected  
33 to have been agreed upon by the payer and the beneficial owner in the absence  
34 of such relationship, the provisions of this Article shall apply only to the  
35 last-mentioned amount. In such case, the excess part of the payments shall  
36 remain taxable according to the law of each Contracting State, due regard being  
37 had to the other provisions of this Convention.

38  
39 9. A resident of a Contracting State shall not be considered the beneficial  
40 owner of the interest arising in the other Contracting State in respect of a

1 debt-claim or other right if such debt-claim or other right might not have been  
2 expected to have been established unless a person:

3  
4 a) that is not entitled to benefits with respect to the interest arising in that  
5 other Contracting State which are equivalent to, or more favourable  
6 than, those available under this Convention to a resident of the  
7 first-mentioned Contracting State; and

8  
9 b) that is not a resident of either Contracting State,

10 owned an equivalent debt-claim or other right against the first-mentioned  
11 resident.

12  
13  
14 10. No relief shall be available under this Article if it was the main  
15 purpose or one of the main purposes of any person concerned with the  
16 assignment of the interest, the creation or assignment of the debt-claim or other  
17 rights in respect of which the interest is paid, or the establishment, acquisition  
18 or maintenance of the company which is the beneficial owner of the interest or  
19 the conduct of its operations to take advantage of this Article.

## 20 **Article 12**

### 21 **ROYALTIES**

22  
23  
24  
25 1. Royalties arising in a Contracting State and beneficially owned by a  
26 resident of the other Contracting State may be taxed in that other Contracting  
27 State.

28  
29 2. However, such royalties may also be taxed in the Contracting State in  
30 which they arise and according to the law of that Contracting State, but the tax  
31 so charged shall not exceed 5 per cent of the gross amount of the royalties.

32  
33 3. The term "royalties" as used in this Article means payments or credits,  
34 whether periodical or not, and however described or computed, to the extent to  
35 which they are made as consideration for:

36  
37 a) the use of, or the right to use, any copyright, patent, design or model,  
38 plan, secret formula or process, trademark or other like property or  
39 right;

- 1           **b)**    the supply of scientific, technical, industrial or commercial knowledge  
2                    or information;  
3  
4           **c)**    the supply of any assistance that is ancillary and subsidiary to, and is  
5                    furnished as a means of enabling the application or enjoyment of, any  
6                    such property or right as is mentioned in subparagraph *a)* or any such  
7                    knowledge or information as is mentioned in subparagraph *b)*;  
8  
9           **d)**    the use of, or the right to use:  
10  
11                    *(i)*     motion picture films; or  
12  
13                    *(ii)*    films or audio or video tapes or disks, or any other means of  
14                    image or sound reproduction or transmission for use in  
15                    connection with television, radio or other broadcasting; or  
16  
17           **e)**    total or partial forbearance in respect of the use or supply of any  
18                    property or right referred to in this paragraph.  
19

20           4.        The provisions of paragraphs 1 and 2 shall not apply if the beneficial  
21                    owner of the royalties, being a resident of a Contracting State, carries on  
22                    business in the other Contracting State in which the royalties arise through a  
23                    permanent establishment situated therein and the property or right in respect of  
24                    which the royalties are paid or credited is effectively connected with such  
25                    permanent establishment. In such case the provisions of Article 7 shall apply.  
26

27           5.        Royalties shall be deemed to arise in a Contracting State when the  
28                    payer is a resident of that Contracting State for the purposes of its tax. Where,  
29                    however, the person paying royalties, whether such person is a resident of a  
30                    Contracting State or not, has in a Contracting State or a state other than the  
31                    Contracting States a permanent establishment in connection with which the  
32                    liability to pay or credit the royalties was incurred, and such royalties are borne  
33                    by such permanent establishment, then:  
34

- 35                    **a)**    if the permanent establishment is situated in a Contracting State, such  
36                    royalties shall be deemed to arise in that Contracting State; and  
37  
38                    **b)**    if the permanent establishment is situated in a state other than the  
39                    Contracting States, such royalties shall not be deemed to arise in either  
40                    Contracting State.  
41

---

1       6.       Where, by reason of a special relationship between the payer and the  
2       beneficial owner of the royalties, or between both of them and some other  
3       person, the amount of the royalties, having regard to what they are paid or  
4       credited for, exceeds the amount which might have been expected to have been  
5       agreed upon by the payer and the beneficial owner in the absence of such  
6       relationship, the provisions of this Article shall apply only to the last-mentioned  
7       amount. In such case, the excess part of the payments or credits shall remain  
8       taxable according to the law of each Contracting State, due regard being had to  
9       the other provisions of this Convention.

10  
11       7.       A resident of a Contracting State shall not be considered the beneficial  
12       owner of the royalties arising in the other Contracting State in respect of the use  
13       of the property or right if such royalties might not have been expected to have  
14       been paid to the resident unless the resident paid royalties in respect of the same  
15       property or right to a person:

16  
17       a)       that is not entitled to benefits with respect to royalties arising in that  
18       other Contracting State which are equivalent to, or more favourable  
19       than, those available under this Convention to a resident of the  
20       first-mentioned Contracting State; and

21  
22       b)       that is not a resident of either Contracting State.

23  
24       8.       No relief shall be available under this Article if it was the main  
25       purpose or one of the main purposes of any person concerned with the  
26       assignment of the royalties, the creation or assignment of the property or right in  
27       respect of which the royalties are paid, or the establishment, acquisition or  
28       maintenance of the company which is the beneficial owner of the royalties or  
29       the conduct of its operations to take advantage of this Article.

### Article 13

#### ALIENATION OF PROPERTY

30  
31  
32  
33  
34  
35       1.       Income, profits or gains derived by a resident of a Contracting State  
36       from the alienation of real property referred to in Article 6 and situated in the  
37       other Contracting State may be taxed in that other Contracting State.

38  
39       2.       Income, profits or gains derived by a resident of a Contracting State  
40       from the alienation of shares in a company or of interests in a partnership, trust  
41       or other entity may be taxed in the other Contracting State where the shares or

1 the interests derive at least 50 per cent of their value directly or indirectly from  
2 real property referred to in Article 6 and situated in that other Contracting State.

3  
4 3. Unless the provisions of paragraph 2 are applicable, income, profits or  
5 gains derived by a resident of a Contracting State which are not subject to tax in  
6 that Contracting State from the alienation of shares issued by a company being a  
7 resident of the other Contracting State may be taxed in that other Contracting  
8 State, if:

- 9  
10 a) shares owned by the alienator (together with such shares owned by  
11 any other related or connected persons as may be aggregated  
12 therewith) amount to at least 25 per cent of the total issued shares of  
13 such company at any time during the taxable year in which the  
14 alienation takes place; and  
15  
16 b) the total of the shares alienated by the alienator and such related or  
17 connected persons during that taxable year in which the alienation  
18 takes place amounts to at least 5 per cent of the total issued shares of  
19 such company.

20  
21 4. Notwithstanding the provisions of paragraph 3, income, profits or  
22 gains from the alienation of property (other than real property) that forms part  
23 of the business property of a permanent establishment which an enterprise of a  
24 Contracting State has in the other Contracting State, including income, profits  
25 or gains from the alienation of that permanent establishment (alone or with the  
26 whole enterprise), may be taxed in that other Contracting State.

27  
28 5. Income, profits or gains derived by an enterprise of a Contracting  
29 State from the alienation of ships or aircraft operated by that enterprise in  
30 international traffic, or of property (other than real property) pertaining to the  
31 operation of such ships or aircraft, shall be taxable only in that Contracting  
32 State.

33  
34 6. Gains from the alienation of any property other than that referred to in  
35 the preceding paragraphs of this Article shall be taxable only in the Contracting  
36 State of which the alienator is a resident.

37  
38 **Article 14**

39  
40 **INCOME FROM EMPLOYMENT**



---

1           1.           Subject to the provisions of Articles 15, 17 and 18, salaries, wages and  
2 other similar remuneration derived by a resident of a Contracting State in  
3 respect of an employment shall be taxable only in that Contracting State unless  
4 the employment is exercised in the other Contracting State. If the employment  
5 is so exercised, such remuneration as is derived therefrom may be taxed in that  
6 other Contracting State.

7  
8           2.           Notwithstanding the provisions of paragraph 1, remuneration derived  
9 by a resident of a Contracting State in respect of an employment exercised in  
10 the other Contracting State shall be taxable only in the first-mentioned  
11 Contracting State if:

- 12  
13           a)       the recipient is present in the other Contracting State for a period or  
14 periods not exceeding in the aggregate 183 days in any 12 month  
15 period commencing or ending in the taxable year of that other  
16 Contracting State;
- 17  
18           b)       the remuneration is paid by, or on behalf of, an employer who is not a  
19 resident of the other Contracting State; and
- 20  
21           c)       the remuneration is not borne by a permanent establishment which the  
22 employer has in the other Contracting State.

23  
24           3.           Notwithstanding the preceding paragraphs of this Article,  
25 remuneration derived in respect of an employment exercised aboard a ship or  
26 aircraft operated in international traffic by an enterprise of a Contracting State  
27 may be taxed in that Contracting State.

## Article 15

### DIRECTORS' FEES

32  
33 Directors' fees and other similar payments derived by a person who is a resident  
34 of a Contracting State in that person's capacity as a member of the board of  
35 directors of a company which is a resident of the other Contracting State may be  
36 taxed in that other Contracting State.

## Article 16

### ENTERTAINERS AND SPORTSPERSONS

1 1. Notwithstanding the provisions of Articles 7 and 14, income derived  
2 by a person who is a resident of a Contracting State as an entertainer, such as a  
3 theatre, motion picture, radio or television artiste, or a musician, or as a  
4 sportsperson, from that person's personal activities as such exercised in the  
5 other Contracting State, may be taxed in that other Contracting State.

6  
7 2. Where income in respect of personal activities exercised by an  
8 entertainer or a sportsperson in that person's capacity as such accrues not to that  
9 person but to another person, that income may, notwithstanding the provisions  
10 of Articles 7 and 14, be taxed in the Contracting State in which the activities of  
11 the entertainer or sportsperson are exercised.

#### 12 **Article 17**

### 13 **PENSIONS AND ANNUITIES**

14  
15  
16  
17 1. Subject to the provisions of paragraph 2 of Article 18, pensions and  
18 other similar remuneration paid periodically to an individual who is a resident  
19 of a Contracting State shall be taxable only in that Contracting State.

20  
21 2. Annuities paid to an individual who is a resident of a Contracting State  
22 shall be taxable only in that Contracting State.

23  
24 3. Lump sums in lieu of the right to receive a pension or other similar  
25 remuneration, or to receive an annuity, paid to an individual who is a resident of  
26 a Contracting State shall be taxable only in that Contracting State. However,  
27 such lump sums may also be taxed in the other Contracting State if they arise in  
28 that other Contracting State.

29  
30 4. The term "annuity" means a stated sum payable periodically at stated  
31 times during the life or during a specified or ascertainable period of time under  
32 an obligation to make the payments in return for adequate and full consideration  
33 in money or money's worth.

#### 34 **Article 18**

### 35 **GOVERNMENT SERVICE**

36  
37  
38  
39 1. a) Salaries, wages and other similar remuneration paid by a Contracting  
40 State or a political subdivision or local authority thereof to an  
41 individual in respect of services rendered to that Contracting State or

1 political subdivision or local authority, in the discharge of functions of  
2 a governmental nature, shall be taxable only in that Contracting State.

3

4 *b)* However, such salaries, wages and other similar remuneration shall be  
5 taxable only in the other Contracting State if the services are rendered  
6 in that other Contracting State and the individual is a resident of that  
7 other Contracting State who:

8

9 *(i)* is a national of that other Contracting State; or

10

11 *(ii)* did not become a resident of that other Contracting State  
12 solely for the purpose of rendering the services.

13

14 2. *a)* Notwithstanding the provisions of paragraph 1, pensions and other  
15 similar remuneration paid periodically by, or out of funds to which  
16 contributions are made or created by, a Contracting State or a political  
17 subdivision or local authority thereof to an individual in respect of  
18 services rendered to that Contracting State or political subdivision or  
19 local authority shall be taxable only in that Contracting State.

20

21 *b)* However, such pensions and other similar remuneration shall be  
22 taxable only in the other Contracting State if the individual is a  
23 resident of, and a national of, that other Contracting State.

24

25 3. The provisions of Articles 14, 15, 16 and 17 shall apply to salaries,  
26 wages, pensions, and other similar remuneration in respect of services rendered  
27 in connection with a business carried on by a Contracting State or a political  
28 subdivision or local authority thereof.

29

30

## **Article 19**

31

### **STUDENTS**

32

33

34 Payments which a student or business apprentice who is or was immediately  
35 before visiting a Contracting State a resident of the other Contracting State and  
36 who is temporarily present in the first-mentioned Contracting State solely for  
37 the purpose of that person's education or training receives for the purpose of  
38 that person's maintenance, education or training shall not be taxed in the  
39 first-mentioned Contracting State, provided that such payments arise from  
40 sources outside that first-mentioned Contracting State. The exemption provided  
41 by this Article shall apply to a business apprentice only for a period not

1 exceeding one year from the date the person first begins that person's training in  
2 the first-mentioned Contracting State.

3  
4 **Article 20**

5  
6 **SLEEPING PARTNERSHIP (TOKUMEI KUMIAI)**

7  
8 Notwithstanding any other provisions of this Convention, other than those of  
9 Article 26, any income, profits or gains derived by a sleeping partner in respect  
10 of a sleeping partnership (Tokumei Kumiai) contract or other similar contract  
11 may be taxed in the Contracting State in which such income, profits or gains  
12 arise, and according to the laws of that Contracting State.

13  
14 **Article 21**

15  
16 **OTHER INCOME**

17  
18 1. Items of income of a resident of a Contracting State, wherever arising,  
19 not dealt with in the foregoing Articles of this Convention shall be taxable only  
20 in that Contracting State.

21  
22 2. The provisions of paragraph 1 shall not apply to income, other than  
23 income from real property as defined in paragraph 2 of Article 6, derived by a  
24 resident of a Contracting State who carries on business in the other Contracting  
25 State through a permanent establishment situated therein and the property or  
26 right in respect of which the income is paid is effectively connected with such  
27 permanent establishment. In such case the provisions of Article 7 shall apply.

28  
29 3. Notwithstanding the provisions of paragraphs 1 and 2, items of  
30 income of a resident of a Contracting State not dealt with in the foregoing  
31 Articles of this Convention from sources in the other Contracting State may also  
32 be taxed in that other Contracting State.

33  
34 **Article 22**

35  
36 **SOURCE OF INCOME**

37  
38 1. Income, profits or gains derived by a resident of a Contracting State  
39 which, under any one or more of Articles 6 to 8 and 10 to 18, may be taxed in  
40 the other Contracting State shall for the purposes of the law of that other

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1 Contracting State relating to its tax be deemed to arise from sources in that other  
2 Contracting State.

3  
4 2. Income, profits or gains derived by a resident of a Contracting State  
5 which, under any one or more of Articles 6 to 8, 10 to 18 and 20, may be taxed  
6 in the other Contracting State shall for the purposes of Article 25 and of the law  
7 of the first-mentioned Contracting State relating to its tax be deemed to arise  
8 from sources in the other Contracting State.

9  
10 **Article 23**

11 **LIMITATION ON BENEFITS**

12  
13  
14 1. Except as otherwise provided in this Article, a resident of a  
15 Contracting State that derives income, profits or gains described in Article 7; in  
16 paragraph 3 of Article 10 or paragraph 3 of Article 11; or in Article 13 from the  
17 other Contracting State shall be entitled to the benefits granted for a taxable  
18 year by the provisions of those paragraphs or Articles only if such resident is a  
19 qualified person as defined in paragraph 2 and satisfies any other specified  
20 conditions in those paragraphs or Articles for the obtaining of such benefits.

21  
22 2. A resident of a Contracting State shall be a qualified person for a  
23 taxable year only if such resident is either:

- 24  
25 a) an individual;
- 26  
27 b) a qualified governmental entity;
- 28  
29 c) a company (including a company participating in a dual listed  
30 company arrangement), if its principal class of shares is listed or  
31 registered on a recognised stock exchange specified in clause (i) or (ii)  
32 of subparagraph d) of paragraph 6 and is regularly traded on one or  
33 more recognised stock exchanges;
- 34  
35 d) a person other than an individual or a company, if the principal class  
36 of units in that person is listed or admitted to dealings on a recognised  
37 stock exchange specified in clause (i) or (ii) of subparagraph d) of  
38 paragraph 6 and is regularly traded on one or more recognised stock  
39 exchanges;
- 40

- 1 e) a pension fund, provided that as of the end of the prior taxable year  
2 more than 50 per cent of its beneficiaries, members or participants are  
3 individuals who are residents of either Contracting State;  
4
- 5 f) an organisation established under the law of that Contracting State and  
6 operated exclusively for a religious, charitable, educational, scientific,  
7 artistic, cultural or public purposes, provided that all or part of its  
8 income, profits or gains may be exempt from tax under the domestic  
9 law of that Contracting State; or  
10
- 11 g) a person other than an individual, if residents of either Contracting  
12 State that are qualified persons by reason of the provisions of  
13 subparagraphs *a)* to *f)* of this paragraph own, directly or indirectly, at  
14 least 50 per cent of the aggregate vote and value of the shares of the  
15 person, or at least 50 per cent of the beneficial interests in the person.  
16
- 17 3. Where the provisions of subparagraph *g)* of paragraph 2 apply:  
18
- 19 a) in respect of taxation by withholding at source, a resident of a  
20 Contracting State shall be considered to satisfy the conditions  
21 described in that subparagraph for the taxable year in which the  
22 payment is made if such resident satisfies those conditions during the  
23 12 month period preceding the date of payment of an item of income,  
24 profits or gains (or, in the case of dividends, the date on which  
25 entitlement to the dividends is determined);  
26
- 27 b) in all other cases, a resident of a Contracting State shall be considered  
28 to satisfy the conditions described in that subparagraph for the taxable  
29 year in which the payment is made if such resident satisfies those  
30 conditions on at least half the days of the taxable year.  
31
- 32 4. a) Notwithstanding that a resident of a Contracting State may not be a  
33 qualified person, that resident shall be entitled to the benefits granted  
34 by the provisions of Article 7; of paragraph 3 of Article 10 or  
35 paragraph 3 of Article 11; or of Article 13 with respect to an item of  
36 income, profits or gains described in those paragraphs or Articles  
37 derived from the other Contracting State if the resident is carrying on  
38 business in the first-mentioned Contracting State (other than the  
39 business of making or managing investments for the resident's own  
40 account, unless the business is banking, insurance or securities  
41 business carried on by a bank, insurance company or securities dealer),

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1 the income, profits or gains derived from the other Contracting State  
2 are derived in connection with, or are incidental to, that business and  
3 that resident satisfies any other specified conditions in those  
4 paragraphs or Articles for the obtaining of such benefits.  
5

6 *b)* If a resident of a Contracting State derives an item of income, profits  
7 or gains from a business carried on by that resident in the other  
8 Contracting State or derives an item of income, profits or gains arising  
9 in the other Contracting State from a person that has with the resident  
10 a relationship described in subparagraph *a)* or *b)* of paragraph 1 of  
11 Article 9, the conditions described in subparagraph *a)* of this  
12 paragraph shall be considered to be satisfied with respect to such an  
13 item of income, profits or gains only if the business carried on in the  
14 first-mentioned Contracting State is substantial in relation to the  
15 business carried on in the other Contracting State. Whether such  
16 business is substantial for the purpose of this paragraph shall be  
17 determined on the basis of all the facts and circumstances.  
18

19 *c)* In determining whether a person is carrying on business in a  
20 Contracting State under subparagraph *a)* of this paragraph, the  
21 business conducted by a partnership in which that person is a partner  
22 and the business conducted by persons connected to such person shall  
23 be deemed to be conducted by such person. A person shall be  
24 connected to another if one possesses, directly or indirectly, at least 50  
25 per cent of the beneficial interests in the other (or, in the case of a  
26 company, at least 50 per cent of the aggregate vote and value of the  
27 shares of the company) or another person possesses, directly or  
28 indirectly, at least 50 per cent of the beneficial interests (or, in the case  
29 of a company, at least 50 per cent of the aggregate vote and value of  
30 the shares of the company) in each person. In any case, a person shall  
31 be considered to be connected to another if, on the basis of all the facts  
32 and circumstances, one has control of the other or both are under the  
33 control of the same person or persons.  
34

35 5. A resident of a Contracting State that is neither a qualified person nor  
36 entitled under paragraph 4 to the benefits granted by the provisions of Article 7;  
37 of paragraph 3 of Article 10 or paragraph 3 of Article 11; or of Article 13 with  
38 respect to an item of income, profits or gains described in those paragraphs or  
39 Articles shall, nevertheless, be granted such benefits if the competent authority  
40 of the other Contracting State determines, in accordance with its domestic law  
41 or administrative practice, that the establishment, acquisition or maintenance of

1 such resident and the conduct of its operations are considered as not having the  
2 obtaining of such benefits as one of the principal purposes.

3  
4 6. For the purposes of this Article:

5  
6 a) the term “qualified governmental entity” means entities referred to in  
7 subparagraphs a) and c) of paragraph 3 of Article 11;

8  
9 b) the term “principal class of shares” means the ordinary shares of the  
10 company, provided that such class of shares represents the majority of  
11 the voting power and value of the company. If no single class of  
12 ordinary shares represents the majority of the voting power and value  
13 of the company, the principal class of shares is that class or those  
14 classes that in the aggregate represent a majority of the voting power  
15 and value of the company. For the purposes of the preceding  
16 sentences, in the case of a company participating in a dual listed  
17 company arrangement, the principal class of shares will be determined  
18 after excluding the special voting shares which were issued as a means  
19 of establishing that dual listed company arrangement;

20  
21 c) the term “dual listed company arrangement” means an arrangement  
22 pursuant to which two publicly listed companies, while maintaining  
23 their separate legal entity status, shareholdings and listings, align their  
24 strategic directions and the economic interests of their respective  
25 shareholders through:

26  
27 (i) the appointment of common (or almost identical) boards of  
28 directors;

29  
30 (ii) management of the operations of the two companies on a  
31 unified basis;

32  
33 (iii) equalised distributions to shareholders in accordance with an  
34 equalisation ratio applying between the two companies,  
35 including in the event of a winding up of one or both of the  
36 companies;

37  
38 (iv) the shareholders of both companies voting in effect as a single  
39 decision-making body on substantial issues affecting their  
40 combined interests; and  
41



- 1                   (v)      cross-guarantees as to, or similar financial support for, each  
2                                   other's material obligations or operations except where the  
3                                   effect of the relevant regulatory requirements prevents such  
4                                   guarantees or financial support;  
5  
6           d)      the term "recognised stock exchange" means:  
7  
8                   (i)      any stock exchange established by a Financial Instruments  
9                                   Exchange or an approved-type financial instruments firms  
10                                  association under the terms of the Financial Instruments and  
11                                  Exchange Law (Law No.25 of 1948) of Japan;  
12  
13                  (ii)     the Australian Securities Exchange and any other securities  
14                                  exchange recognised as such under the Corporations Act 2001  
15                                  of Australia; and  
16  
17                  (iii)    any other stock exchange which the competent authorities of  
18                                  the Contracting States agree to recognise for the purposes of  
19                                  this Article;  
20  
21           e)      the term "units" includes any instrument, not being a debt-claim,  
22                                  granting an entitlement to share in the asset or income of, or receive a  
23                                  distribution from, the person;  
24  
25           f)      the term "principal class of units" means the class of units which  
26                                  represents the majority of the value of the person. If no single class of  
27                                  units represents the majority of the value of the person, the principal  
28                                  class of units is that class or those classes that in the aggregate  
29                                  represent the majority of the value of the person; and  
30  
31           g)      the term "pension fund" means any person that:  
32  
33                   (i)      is established under the law of a Contracting State; and  
34  
35                   (ii)     is operated principally to administer or provide pensions,  
36                                  retirement benefits or other similar remuneration or to earn  
37                                  income, profits or gains for the benefit of other pension funds.  
38

39   7.           Nothing in this Article shall be construed as restricting, in any manner,  
40           the application of any provisions of the law of a Contracting State which are  
41           designed to prevent the avoidance or evasion of taxes.

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**Article 24**

**LIMITATION OF RELIEF**

1. Where under this Convention any income, profits or gains are relieved from tax in a Contracting State and, under the law in force in the other Contracting State, an individual, in respect of that income or those profits or gains, is taxed by reference to the amount thereof that is remitted to or received in that other Contracting State and not by reference to the full amount thereof, then the relief to be allowed under the Convention in the first-mentioned Contracting State shall apply only to so much of that income or those profits or gains as is taxed in the other Contracting State.

2. Where under this Convention any income, profits or gains are relieved from tax in a Contracting State and, under the law in force in the other Contracting State, an individual, in respect of that income or those profits or gains, is exempt from tax by virtue of being a temporary resident of that other Contracting State within the meaning of the applicable law of that other Contracting State, then the relief to be allowed under the Convention in the first-mentioned Contracting State shall not apply to the extent that that income or those profits or gains are exempt from tax in the other Contracting State.

**Article 25**

**ELIMINATION OF DOUBLE TAXATION**

1. Subject to the provisions of the laws of Japan regarding the allowance as a credit against Japanese tax of tax payable in any country other than Japan:

- a) Where a resident of Japan derives income from Australia which may be taxed in Australia in accordance with the provisions of this Convention, the amount of Australian tax payable in respect of that income shall be allowed as a credit against the Japanese tax imposed on that resident. The amount of credit, however, shall not exceed that part of the Japanese tax which is appropriate to that income.
- b) Where the income derived from Australia is dividends paid by a company which is a resident of Australia to a company which is a resident of Japan and which has owned at least 10 per cent either of the voting shares or of the total issued shares of the company paying

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1 the dividends during the period of six months immediately before the  
2 day when the obligation to pay dividends is confirmed, the credit shall  
3 take into account Australian tax payable by the company paying the  
4 dividends in respect of its income.  
5

6 2. Subject to the provisions of the law of Australia from time to time in  
7 force which relate to the allowance of a credit against Australian tax of tax paid  
8 in a country outside Australia (which shall not affect the general principle of  
9 this Article), Japanese tax paid under the law of Japan and in accordance with  
10 this Convention, whether directly or by deduction, in respect of income, profits  
11 or gains derived by a person who is a resident of Australia from sources in  
12 Japan shall be allowed as a credit against Australian tax payable in respect of  
13 that income, profits or gains.  
14

15 **Article 26**

16 **NON-DISCRIMINATION**

17  
18  
19 1. Nationals of a Contracting State shall not be subjected in the other  
20 Contracting State to any taxation or any requirement connected therewith,  
21 which is other or more burdensome than the taxation and connected  
22 requirements to which nationals of that other Contracting State in the same  
23 circumstances, in particular with respect to residence, are or may be subjected.  
24 The provisions of this paragraph shall, notwithstanding the provisions of Article  
25 1, also apply to persons who are not residents of one or both of the Contracting  
26 States.  
27

28 2. The taxation on a permanent establishment which an enterprise of a  
29 Contracting State has in the other Contracting State shall not be less favourably  
30 levied in that other Contracting State than the taxation levied on enterprises of  
31 that other Contracting State carrying on the same activities in similar  
32 circumstances. The provisions of this paragraph shall not be construed as  
33 obliging a Contracting State to grant to individuals who are residents of the  
34 other Contracting State any personal allowances, reliefs and reductions for  
35 taxation purposes which it grants to its own residents.  
36

37 3. Except where the provisions of paragraph 1 of Article 9, paragraph 8  
38 of Article 11, or paragraph 6 of Article 12, apply, interest, royalties and other  
39 disbursements paid by an enterprise of a Contracting State to a resident of the  
40 other Contracting State shall, for the purpose of determining the taxable profits  
41

1 of such enterprise, be deductible under the same conditions as if they had been  
2 paid to a resident of the first-mentioned Contracting State.

3  
4 4. Enterprises of a Contracting State, the capital of which is wholly or  
5 partly owned or controlled, directly or indirectly, by one or more residents of  
6 the other Contracting State, shall not be subjected in the first-mentioned  
7 Contracting State to any taxation or any requirement connected therewith which  
8 is other or more burdensome than the taxation and connected requirements to  
9 which other similar enterprises of the first-mentioned Contracting State in  
10 similar circumstances are or may be subjected.

11  
12 5. The provisions of this Article shall, notwithstanding the provisions of  
13 Article 2, apply to taxes of every kind and description imposed by a Contracting  
14 State or a political subdivision or local authority thereof.

#### 15 **Article 27**

### 16 **MUTUAL AGREEMENT PROCEDURE**

17  
18  
19  
20 1. Where a person considers that the actions of one or both of the  
21 Contracting States result or will result for the person in taxation not in  
22 accordance with the provisions of this Convention, the person may, irrespective  
23 of the remedies provided by the domestic law of those Contracting States,  
24 present a case to the competent authority of the Contracting State of which the  
25 person is a resident or, if the case comes under paragraph 1 of Article 26, to that  
26 of the Contracting State of which the person is a national. The case must be  
27 presented within three years from the first notification of the action resulting in  
28 taxation not in accordance with the provisions of the Convention.

29  
30 2. The competent authority shall endeavour, if the claim appears to it to  
31 be justified and if it is not itself able to arrive at a satisfactory solution, to  
32 resolve the case by mutual agreement with the competent authority of the other  
33 Contracting State, with a view to the avoidance of taxation which is not in  
34 accordance with the provisions of this Convention. Any agreement reached  
35 shall be implemented notwithstanding any time limits in the domestic law of the  
36 Contracting States.

37  
38 3. The competent authorities of the Contracting States shall endeavour to  
39 resolve by mutual agreement any difficulties or doubts arising as to the  
40 interpretation or application of this Convention. They may also consult together

1 for the elimination of double taxation in cases not provided for in the  
2 Convention.

3  
4 4. The competent authorities of the Contracting States may communicate  
5 with each other directly for the purpose of reaching an agreement in the sense of  
6 the preceding paragraphs of this Article.

7  
8 5. For the purposes of paragraph 3 of Article XXII (Consultation) of the  
9 General Agreement on Trade in Services, the Contracting States agree that,  
10 notwithstanding the provisions of that paragraph, any dispute between them as  
11 to whether a measure falls within the scope of this Convention may be brought  
12 before the Council for Trade in Services, as provided by that paragraph, only  
13 with the consent of both Contracting States. Any doubt as to the interpretation  
14 of this paragraph shall be resolved under paragraph 3 of this Article or, failing  
15 agreement under that procedure, pursuant to any other procedure agreed to by  
16 both Contracting States.

17  
18 **Article 28**

19  
20 **EXCHANGE OF INFORMATION**

21  
22 1. The competent authorities of the Contracting States shall exchange  
23 such information as is foreseeably relevant for carrying out the provisions of  
24 this Convention or to the administration or enforcement of the domestic law  
25 concerning taxes of every kind and description imposed on behalf of the  
26 Contracting States, insofar as the taxation thereunder is not contrary to the  
27 Convention. The exchange of information is not restricted by Articles 1 and 2.

28  
29 2. Any information received under paragraph 1 by a Contracting State  
30 shall be treated as secret in the same manner as information obtained under the  
31 domestic law of that Contracting State and shall be disclosed only to persons or  
32 authorities (including courts and administrative bodies) concerned with the  
33 assessment or collection of, the enforcement or prosecution in respect of, the  
34 determination of appeals in relation to the taxes referred to in paragraph 1, or  
35 the oversight of the above. Such persons or authorities shall use the information  
36 only for such purposes. They may disclose the information in public court  
37 proceedings or in judicial decisions.

38  
39 3. In no case shall the provisions of paragraphs 1 and 2 be construed so  
40 as to impose on a Contracting State the obligation:  
41

- 1 a) to carry out administrative measures at variance with the law and  
2 administrative practice of that or of the other Contracting State;  
3  
4 b) to supply information which is not obtainable under the law or in the  
5 normal course of the administration of that or of the other Contracting  
6 State;  
7  
8 c) to supply information which would disclose any trade, business,  
9 industrial, commercial or professional secret or trade process, or  
10 information, the disclosure of which would be contrary to public  
11 policy.

12  
13 4. If information is requested by a Contracting State in accordance with  
14 this Article, the other Contracting State shall use its information gathering  
15 measures to obtain the requested information, even though that other  
16 Contracting State may not need such information for its own tax purposes. The  
17 obligation contained in the preceding sentence is subject to the limitations of  
18 paragraph 3 but in no case shall such limitations be construed to permit a  
19 Contracting State to decline to supply information solely because it has no  
20 domestic interest in such information.

21  
22 5. In no case shall the provisions of paragraph 3 be construed to permit a  
23 Contracting State to decline to supply information solely because the  
24 information is held by a bank, other financial institution, nominee or person  
25 acting in an agency or a fiduciary capacity or because it relates to ownership  
26 interests in a person.

#### Article 29

### MEMBERS OF DIPLOMATIC MISSIONS AND CONSULAR POSTS

27  
28  
29  
30  
31  
32  
33 Nothing in this Convention shall affect the fiscal privileges of members of  
34 diplomatic missions or consular posts under the general rules of international  
35 law or under the provisions of special international agreements.

#### Article 30

### HEADINGS

36  
37  
38  
39  
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1 The headings of the Articles of this Convention are inserted for convenience of  
2 reference only and shall not affect the interpretation of the Convention.

3  
4 **Article 31**

5  
6 **ENTRY INTO FORCE**

7  
8 1. This Convention shall be approved in accordance with the legal  
9 procedures of each of the Contracting States and shall enter into force on the  
10 thirtieth day after the date of exchange of diplomatic notes indicating such  
11 approval.

12  
13 2. This Convention shall be applicable:

14  
15 *a)* in the case of Japan:

16  
17 *(i)* with respect to taxes withheld at source, for amounts taxable  
18 on or after 1 January in the calendar year next following that  
19 in which the Convention enters into force;

20  
21 *(ii)* with respect to taxes on income which are not withheld at  
22 source, as regards income for any taxable year beginning on  
23 or after 1 January in the calendar year next following that in  
24 which the Convention enters into force; and

25  
26 *(iii)* with respect to other taxes, as regards taxes for any taxable  
27 year beginning on or after 1 January in the calendar year next  
28 following that in which the Convention enters into force; and

29  
30 *b)* in the case of Australia:

31  
32 *(i)* with respect to withholding tax on income that is derived by a  
33 resident of Japan, in relation to income derived on or after  
34 1 January in the calendar year next following that in which  
35 the Convention enters into force; and

36  
37 *(ii)* with respect to other taxes, as regards any taxable year  
38 beginning on or after 1 July in the calendar year next  
39 following that in which the Convention enters into force.  
40

1 3. The Agreement between Japan and the Commonwealth of Australia  
2 for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion  
3 with respect to Taxes on Income signed at Canberra on 20 March, 1969  
4 (hereinafter referred to as “the prior Agreement”) shall cease to be effective  
5 from the date upon which this Convention has effect in respect of the taxes to  
6 which the Convention applies in accordance with the provisions of paragraph 2.  
7

8 4. The prior Agreement shall terminate on the last date on which it has  
9 effect in accordance with this Article.  
10

11 5. Notwithstanding the entry into force of this Convention, an individual  
12 who is entitled to the benefits of Article 15 of the prior Agreement at the time of  
13 the entry into force of the Convention shall continue to be entitled to such  
14 benefits until such time as the individual would have ceased to be entitled to  
15 such benefits if the prior Agreement had remained in force.  
16

### 17 Article 32

#### 18 TERMINATION

19  
20  
21 This Convention shall remain in force until terminated by a Contracting State.  
22 Either Contracting State may terminate the Convention after the expiration of a  
23 period of five years from the date of its entry into force, by giving to the other  
24 Contracting State, through the diplomatic channel, six months prior written  
25 notice of termination. In such event, the Convention shall cease to have effect:  
26

27 a) in the case of Japan:

28  
29 (i) with respect to taxes withheld at source, for amounts taxable  
30 on or after 1 January in the calendar year next following the  
31 expiration of the six month period;

32  
33 (ii) with respect to taxes on income which are not withheld at  
34 source, as regards income for any taxable year beginning on  
35 or after 1 January in the calendar year next following the  
36 expiration of the six month period; and

37  
38 (iii) with respect to other taxes, as regards taxes for any taxable  
39 year beginning on or after 1 January in the calendar year next  
40 following the expiration of the six month period; and  
41



- 1           **b)**    in the case of Australia:  
2  
3                *(i)*     with respect to withholding tax on income that is derived by a  
4                    resident of Japan, in relation to income derived on or after  
5                    1 January in the calendar year next following the expiration of  
6                    the six month period; and  
7  
8                *(ii)*    with respect to other taxes, as regards any taxable year  
9                    beginning on or after 1 July in the calendar year next  
10                    following the expiration of the six month period.  
11

12   IN WITNESS WHEREOF the undersigned, being duly authorised thereto by  
13   their respective Governments, have signed this Convention.  
14

15  
16   DONE in duplicate at Tokyo this thirty-first day of January, 2008, in the  
17   English and Japanese languages, each text being equally authentic.  
18  
19

**For Australia**

**For Japan**

Hon. Stephen Smith  
Minister for Foreign Affairs  
[Signatures omitted]

Hon. Masahiko Koumura  
Minister for Foreign Affairs

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## Protocol

At the signing of the Convention between Australia and Japan for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income (hereinafter referred to as “the Convention”), Australia and Japan have agreed upon the following provisions, which shall form an integral part of the Convention.

1. With reference to subparagraph *b*) of paragraph 1 of Article 2 (Taxes Covered) of the Convention:

The term “the petroleum resource rent tax” means the resource rent tax, in respect of offshore projects relating to the exploration for or exploitation of petroleum resources, imposed under the Petroleum Resource Rent Tax Act 1987.

2. With reference to subparagraph *d*) of paragraph 1 of Article 3 (General Definitions) of the Convention:

The term “Australian tax” or “Japanese tax” shall not include any amount which represents a penalty or interest imposed under the laws of Australia or Japan, respectively, relating to the taxes to which the Convention applies.

3. With reference to paragraph 2 of Article 4 (Resident) of the Convention:

It is understood that the fact of having an habitual abode in a Contracting State rather than in the other Contracting State shall be taken into account in determining where the individual’s centre of vital interests is situated.

4. With reference to paragraph 3 of Article 4 (Resident) of the Convention:

It is understood that the term “any other relevant factors” includes:

- a)* where the senior day-to-day management is carried on;
- b)* which Contracting State’s law governs the legal status;

1           c) where the accounting records are held; and

2  
3           d) where business is carried on.

4  
5       5.       With reference to subparagraphs *b*) and *c*) of paragraph 4 of Article 5  
6 (Permanent Establishment) of the Convention:

7  
8           a) It is understood that an enterprise of a Contracting State shall not be  
9 considered to operate equipment in the other Contracting State where  
10 the enterprise leases equipment under a lease contract that is solely for  
11 the provision of equipment, including a bareboat lease contract.

12  
13           b) It is understood that the factors of size, quantity or value of equipment  
14 or the role of equipment in income producing activities are relevant in  
15 determining whether the equipment is substantial on the basis of the  
16 facts and circumstances of each particular case.

17  
18           c) It is understood that the term “substantial equipment” may include:

19  
20               *(i)* industrial earthmoving equipment or construction equipment  
21 used in road building, dam building or powerhouse  
22 construction;

23  
24               *(ii)* manufacturing or processing equipment used in a factory; and

25  
26               *(iii)* oil or drilling rigs, platforms and other structures used in the  
27 petroleum or mining industry.

28  
29       6.       With reference to paragraph 7 of Article 5 (Permanent Establishment)  
30 of the Convention:

31  
32 It is understood that the term “substantially negotiate” is included in order to  
33 remove any doubt as to the existence of a permanent establishment where  
34 contracts that have been negotiated by an agent in a Contracting State are  
35 formally concluded in the other Contracting State.

36  
37       7.       With reference to Articles 6 (Income from Real Property), 7 (Business  
38 Profits), 21 (Other Income) and 22 (Source of Income) of the Convention:

39  
40 It is understood that nothing in these Articles shall prevent a Contracting State  
41 from applying its domestic tax law in the case where income is derived by a

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1 resident of that Contracting State from real property situated in that Contracting  
2 State, even where such a resident carries on business in the other Contracting  
3 State through a permanent establishment situated therein and the real property is  
4 effectively connected with such permanent establishment. In this case, such  
5 income shall not be deemed to arise from sources in that other Contracting State  
6 for the purposes of applying the domestic tax law of the first-mentioned  
7 Contracting State.

8  
9 8. With reference to subparagraph *f*) of paragraph 2 of Article 6 (Income  
10 from Real Property) of the Convention:

11  
12 It is understood that the rights referred to in that subparagraph principally cover:

- 13  
14 a) rights to receive payments where the person receiving the payments  
15 grants rights to explore for or exploit natural resources; and  
16  
17 b) rights to receive payments which arise or are quantified by reference  
18 to the exploitation of, or exploration for, natural resources in  
19 circumstances where the person receiving the payments may not have  
20 an interest in the natural resources or rights over the extraction of, or  
21 exploration for, natural resources.

22  
23 9. With reference to Articles 7 (Business Profits) and 13 (Alienation of  
24 Property) of the Convention:

25  
26 It is understood that, where an enterprise of a Contracting State which has  
27 carried on business in the other Contracting State through a permanent  
28 establishment situated therein, receives, after the enterprise has ceased to carry  
29 on business as aforesaid, income, profits or gains attributable to the permanent  
30 establishment, such income, profits or gains may be taxed in that other  
31 Contracting State in accordance with the principles stated in Articles 7 and 13  
32 of the Convention.

33  
34 10. With reference to paragraph 6 of Article 7 (Business Profits) of the  
35 Convention:

36  
37 It is understood that, for the purposes of the paragraph, a good and sufficient  
38 reason to the contrary shall be considered to exist where there is an alternative  
39 method that gives the most appropriate determination of the profits in  
40 accordance with the principles contained in the Article.

1 11. With reference to subparagraph *a*) of paragraph 9 of Article 7  
2 (Business Profits) of the Convention:

3  
4 It is understood that in the case of Japan the term “a trust which is treated as a  
5 company for tax purposes” means a trust, the trustee of which is subject to tax  
6 in respect of profits derived from business carried on by the use of trust estate.

7  
8 12. With reference to Articles 10 (Dividends), 11 (Interest) and 12  
9 (Royalties) of the Convention:

10  
11 The term “for the purposes of its tax” in relation to a resident of a Contracting  
12 State refers to the case where a person is a resident of a Contracting State by  
13 virtue of paragraph 1 of Article 4 of the Convention, even if the person is  
14 deemed to be a resident of the other Contracting State by virtue of paragraph 2  
15 or 3 of that Article.

16  
17 13. With reference to subparagraph *a*) of paragraph 3 of Article 11  
18 (Interest) of the Convention:

19  
20 It is understood that the term “any other body exercising governmental  
21 function” shall be determined according to the law of the Contracting State in  
22 which the interest arises.

23  
24 14. With reference to subparagraph *b*) of paragraph 3 of Article 11  
25 (Interest) of the Convention:

26  
27 It is understood that:

- 28  
29 *a*) a financial institution shall be unrelated to a payer of the interest  
30 where, in considering the level of participation in the ownership or  
31 control of either the financial institution or the payer by the other  
32 party, neither party is able to exert sufficient influence over the other  
33 party;
- 34  
35 *b*) an enterprise shall derive its profits substantially by a certain activity,  
36 where the activity constitutes its main activity when compared to any  
37 other activity that it undertakes in terms of its contribution to the  
38 enterprise’s overall profits.

39  
40 15. With reference to paragraph 4 of Article 11 (Interest) of the  
41 Convention:

1  
2 It is understood that the term “arrangement involving back-to-back loans”  
3 would cover, *inter alia*, any kind of arrangement structured in such a way that a  
4 financial institution which is a resident of a Contracting State receives interest  
5 arising in the other Contracting State and the financial institution pays an  
6 equivalent interest to another person who is a resident of the first-mentioned  
7 Contracting State and, if it received the interest directly from the other  
8 Contracting State, would not be entitled to the exemption from tax with respect  
9 to that interest in that other Contracting State.

10  
11 16. With reference to paragraph 3 of Article 12 (Royalties) of the  
12 Convention:

13  
14 The term “royalties” shall not include payments for the use of spectrum  
15 licences. The provisions of Article 7 of the Convention shall apply to such  
16 payments.

17  
18 17. With reference to subparagraph *e*) of paragraph 3 of Article 12  
19 (Royalties) of the Convention:

20  
21 It is understood that the term “forbearance in respect of the use or supply of any  
22 property or right” applies to cases where the holder of any property or right  
23 receives a payment or provides credits, as consideration, for not making such  
24 property or right available to another person.

25  
26 18. With reference to paragraph 3 of Article 13 (Alienation of Property) of  
27 the Convention:

28  
29 It is understood that where, in the case of schemes of reorganisation of  
30 companies, the laws of a Contracting State allow for the taxation of the gains  
31 arising from the disposal of shares in a company to be deferred, such gains shall  
32 be regarded as subject to tax unless any part of the deferred gains is as a result  
33 of a later disposal or reorganisation subject to a statutory exemption under the  
34 laws of that Contracting State.

35  
36 19. With reference to paragraph 1 of Article 25 (Elimination of Double  
37 Taxation) of the Convention:

38  
39 For the purposes of the paragraph, the income tax and the petroleum resource  
40 rent tax referred to in subparagraph *b*) of paragraph 1 of Article 2 of the  
41 Convention shall be treated as a unified tax on income.

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20. With reference to Article 26 (Non-Discrimination) of the Convention:

The provisions of the Article shall not apply to the following provisions of the laws of Australia:

- a) Subdivision A of Division 3 of Part III of the Income Tax Assessment Act 1936 (hereinafter referred to as “ITAA 1936”), which provides deductions to eligible taxpayers for research and development;
- b) Section 26-25 of Part 2-5 of Chapter 2 of the Income Tax Assessment Act 1997 (hereinafter referred to as “ITAA 1997”), which provides measures to ensure that taxes can be effectively collected and recovered, including conservancy measures under the general law; and
- c) any provision adopted after the date of signature of the Convention which is substantially similar in purpose or intent to a provision covered by this paragraph, or is otherwise agreed between the Governments of the Contracting States through an exchange of diplomatic notes.

21. With reference to Article 26 (Non-Discrimination) of the Convention:

It is understood that nothing in the Article shall be construed as restricting the application of any of the following provisions of the laws of Australia:

- a) Subdivision D of Division 2 of Part III of the ITAA 1936, to the extent those provisions do not allow tax rebates or credits to non-resident taxpayers in relation to dividends paid by a company that is a resident of Australia for the purposes of its tax;
- b) Division 6AAA of Part III of the ITAA 1936, which provides for the taxation of certain residents in relation to non-resident trust estates;
- c) Division 13 of Part III of the ITAA 1936, which deals with transfer pricing;
- d) Section 177E of Part IVA of the ITAA 1936, which addresses dividend stripping arrangements;

- 1 e) Part X of the ITAA 1936, which provides for the taxation of certain  
2 residents with interests in controlled foreign companies;  
3  
4 f) Part XI of the ITAA 1936, which provides for the taxation of certain  
5 resident investors in foreign investment funds and foreign life  
6 assurance policies;  
7  
8 g) Section 122-25 of Part 3-3 of Chapter 3 of the ITAA 1997, which does  
9 not permit the deferral of tax arising on the transfer of an asset, where  
10 the subsequent transfer of the asset by the transferee would be beyond  
11 the taxing jurisdiction of Australia under its laws;  
12  
13 h) Part 3-90 of Chapter 3 of the ITAA 1997, which provides for  
14 consolidation of group entities for treatment as a single entity for tax  
15 purposes;  
16  
17 i) Division 820 of Part 4-5 of Chapter 4 of the ITAA 1997, which  
18 addresses thin capitalisation; and  
19  
20 j) any provision adopted after the date of signature of the Convention  
21 which is substantially similar in purpose or intent to a provision  
22 covered by this paragraph, or is otherwise agreed between the  
23 Governments of the Contracting States through an exchange of  
24 diplomatic notes.

25  
26 22. With reference to paragraph 1 of Article 28 (Exchange of Information)  
27 of the Convention:

28  
29 In the case of Australia, the term “taxes of every kind and description imposed  
30 on behalf of the Contracting States” means taxes of every kind and description  
31 imposed under the federal tax laws administered by the Commissioner of  
32 Taxation.  
33

34 23. It is understood that under paragraph 5 of Article 28 of the Convention  
35 a refusal to supply information held by a bank, other financial institution,  
36 nominee or person acting in an agency or a fiduciary capacity or information  
37 relating to ownership interests must be based on reasons unrelated to the  
38 person’s status as a bank, other financial institution, nominee, agent or  
39 fiduciary, or the fact that the information relates to ownership interests. It is also  
40 understood that under paragraph 5 of Article 28 a Contracting State may decline  
41 to supply information relating to confidential communications between



1 attorneys, solicitors or other admitted legal representatives in their role as such  
2 and their clients to the extent that the communications are protected from  
3 disclosure under the domestic law of that Contracting State.

4  
5 IN WITNESS WHEREOF the undersigned, being duly authorised thereto by  
6 their respective Governments, have signed this Protocol.

7  
8  
9 DONE in duplicate at Tokyo this thirty-first day of January, 2008, in the  
10 English and Japanese languages, each text being equally authentic.

11  
12

**For Australia**

**For Japan**

Hon. Stephen Smith  
Minister for Foreign Affairs  
[Signatures omitted]

Hon. Masahiko Koumura  
Minister for Foreign Affairs

13  
14

(Japanese Note)

Translation

Tokyo, 31 January, 2008

Excellency:

I have the honour to refer to the Convention between Japan and Australia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income which was signed today (hereinafter referred to as “the Convention”) and to the Protocol also signed today which forms an integral part of the Convention, and to make, on behalf of the Government of Japan, the following proposals:

1. It is understood that both Contracting States shall cooperate for the avoidance of double taxation through appropriate application of the provisions of the Convention and other necessary measures.

2. With reference to Article 9 (Associated Enterprises) of the Convention:

It is understood that both Contracting States shall undertake to conduct transfer pricing examinations of enterprises and evaluate applications for advance pricing arrangements in accordance with the Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations of the Organisation for Economic Cooperation and Development (hereinafter referred to as “the OECD Transfer Pricing Guidelines”), which reflect the international consensus with respect to these issues. The domestic transfer pricing rules, including the transfer pricing methods, of each Contracting State may be applied in resolving transfer pricing cases under the Convention only to the extent that they are consistent with the OECD Transfer Pricing Guidelines.

His Excellency  
The Hon. Stephen Smith  
Minister for Foreign Affairs  
of Australia

1 3. With reference to paragraph 3 of Article 10 (Dividends) and  
2 subparagraph a) of paragraph 3 of Article 23 (Limitation on Benefits) of the  
3 Convention:

4  
5 It is understood that the date on which entitlement to the dividends is  
6 determined is:

- 7  
8 a) in the case of Japan, the end of the accounting period for which  
9 the distribution of profits takes place; or  
10 b) in the case of Australia, the date the dividends are declared.

11  
12 If the foregoing understanding is acceptable to the Government of  
13 Australia, I have the honour to suggest that the present note and Your  
14 Excellency's reply to that effect should be regarded as constituting an  
15 agreement between the two Governments in this matter, which shall enter into  
16 force at the same time as the Convention.

17  
18 I avail myself of this opportunity to extend to Your Excellency the  
19 assurance of my highest consideration.

20  
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26 Masahiko Koumura  
27 Minister for Foreign Affairs  
28 of Japan  
29 [Signature omitted]  
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(Australian Note)

Tokyo, 31 January, 2008

Excellency:

I have the honour to acknowledge receipt of Your Excellency's Note of today's date which in translation reads as follows:

“(Japanese Note)”

The foregoing understanding being acceptable to the Government of Australia, I have the honour to confirm that Your Excellency's Note and this reply shall be regarded as constituting an agreement between the two Governments in this matter, which shall enter into force at the same time as the entry into force of the Convention.

I take this opportunity to extend to Your Excellency the assurance of my highest consideration.

Stephen Smith  
Minister for Foreign Affairs  
of Australia  
[Signature omitted]

His Excellency  
Mr. Masahiko Koumura  
Minister for Foreign Affairs  
of Japan