

(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

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

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

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

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

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

Masahiko Koumura  
Minister for Foreign Affairs  
of Japan

(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

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