

(Japanese Note)

Tokyo, August 25, 2010

Excellency:

I have the honour to refer to the Convention between Japan and the Kingdom of the Netherlands for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income signed today (hereinafter referred to as "the Convention") and to confirm, on behalf of the Government of Japan, the following understanding reached between the two Governments:

1. With reference to subparagraph m) of paragraph 1 of Article 3 of the Convention, it is understood that the term "pension fund" includes the following and any identical or substantially similar funds which are established pursuant to legislation introduced after the date of signature of the Convention:

- a) funds established as the pension or retirement benefits systems implemented under the following laws in Japan:
  - (i) National Pension Law (Law No. 141 of 1959);
  - (ii) Employees' Pension Insurance Law (Law No. 115 of 1954);
  - (iii) The Law Concerning Mutual Aid Association for National Public Officials (Law No. 128 of 1958);
  - (iv) The Law Concerning Mutual Aid Association for Local Public Officials and Personnel of Similar Status (Law No. 152 of 1962);
  - (v) The Law Concerning Mutual Aid for Private School Personnel (Law No. 245 of 1953);
  - (vi) Coal-Mining Pension Fund Law (Law No. 135 of 1967);

His Excellency  
Dr. Philip De Heer  
Ambassador Extraordinary  
and Plenipotentiary of  
the Kingdom of the Netherlands  
to Japan

- (vii) Defined-Benefit Corporate Pension Law (Law No. 50 of 2001);
  - (viii) Defined-Contribution Pension Law (Law No. 88 of 2001);
  - (ix) Farmers' Pension Fund Law (Law No. 127 of 2002);
  - (x) Corporate Tax Law (Law No. 34 of 1965);
  - (xi) Small and Medium Enterprises Retirement Allowance Mutual Aid Law (Law No. 160 of 1959);
  - (xii) Small Enterprise Mutual Relief Projects Law (Law No. 102 of 1965); and
  - (xiii) Cabinet Order of Income Tax Law (Cabinet Order No. 96 of 1965); and
- b) pension institutions regulated under the following laws in the Netherlands:
- (i) Pension Act (Pensioenwet);
  - (ii) Obligatory Occupational Pension Schemes Act (Wet verplichte beroepspensioenregeling);
  - (iii) Industry-wide pension fund (mandatory scheme membership) Act 2000 (Wet verplichte deelneming in een bedrijfstakpensioenfonds 2000);
  - (iv) Act on the Notary Office (Wet op het notarisambt); and
  - (v) Act on Financial Supervision (Wet op het financieel toezicht).

2. With reference to Articles 10, 11, 12 and 20 of the Convention, it is understood that, in determining the status of a resident of a Contracting State as a beneficial owner by applying the provisions of those Articles, the other Contracting State shall take into consideration the principle with respect to the interpretation of the term "beneficial owner" as set out in the commentary on the Model Tax Convention on Income and on Capital of the Organisation for Economic Cooperation and Development.

3. With reference to paragraphs 1 and 2 of Article 17 of the Convention, it is understood that pensions and other similar remuneration, including social security payments, and annuities will be considered to be adequately subject to tax in case:

- a) the payments are subject to a tax rate that is substantially similar to the tax rate applicable to income from employment, and
- b) at least 90 per cent of the payments are included in the basis upon which tax is imposed.

It is further understood that the amount of those payments equal to the amount of the public pension deduction granted under the Income Tax Law (Law No. 33 of 1965) of Japan will be regarded as being included in the basis upon which tax is imposed and subject to a tax rate that is substantially similar to the tax rate applicable to income from employment.

4. With reference to paragraph 7 of Article 21 of the Convention, the competent authority of a Contracting State will notify to the competent authority of the other Contracting State before denying benefits of the Convention.

5. With reference to Article 22 of the Convention, it is understood that, subject to the provisions of the laws of the Netherlands regarding the exemption from the company tax of dividends received in relation to a qualifying shareholding (the participation exemption), a company which is a resident of the Netherlands and which derives dividends from a company which is a resident of Japan shall be entitled, for the purpose of Netherlands tax, to the same relief which would be granted to the company if the company paying the dividends were a resident of the Netherlands.

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

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

Koichi Takemasa  
State Secretary  
for Foreign Affairs of Japan

(Dutch Note)

Tokyo, August 25, 2010

Excellency:

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

“(Japanese Note)”

The foregoing understanding being acceptable to the Government of the Netherlands, I have the honour to confirm that Your Excellency's Note and this reply shall be regarded as constituting an arrangement 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 avail myself of this opportunity to extend to Your Excellency the assurance of my highest consideration.

Philip De Heer  
Ambassador Extraordinary  
and Plenipotentiary of  
the Kingdom of the Netherlands  
to Japan

His Excellency  
Mr. Koichi Takemasa  
State Secretary  
for Foreign Affairs of Japan