

CONVENTION BETWEEN  
JAPAN AND THE KINGDOM OF SPAIN  
FOR THE ELIMINATION OF DOUBLE TAXATION  
WITH RESPECT TO TAXES ON INCOME  
AND THE PREVENTION OF TAX EVASION AND AVOIDANCE

Japan and the Kingdom of Spain,

Desiring to further develop their economic relationship and to enhance their co-operation in tax matters,

Intending to conclude a Convention for the elimination of double taxation with respect to taxes on income without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in this Convention for the indirect benefit of residents of third States),

Have agreed as follows:

Article 1  
PERSONS COVERED

1. This Convention shall apply to persons who are residents of one or both of the Contracting States.
2. For the purposes of this Convention, income derived by or through an entity or arrangement that is treated as wholly or partly fiscally transparent under the tax law of either Contracting State shall be considered to be income of a resident of a Contracting State but only to the extent that:
  - (a) the income is treated, for purposes of taxation by that Contracting State, as the income of a resident of that Contracting State; and
  - (b) the entity or arrangement is established under the law of:
    - (i) either Contracting State; or
    - (ii) a third jurisdiction that:

- (aa) has an agreement in force containing provisions for the exchange of information on tax matters with the Contracting State from which the income is derived; and
- (bb) treats the entity or arrangement as wholly fiscally transparent under the tax law of that third jurisdiction.

In no case shall the provisions of this paragraph be construed so as to affect a Contracting State's right to tax the residents of that Contracting State.

Article 2  
TAXES COVERED

1. This Convention shall apply to taxes on income imposed on behalf of a Contracting State, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income all taxes imposed on total income or on elements of income, including taxes on gains from the alienation of any property, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

3. The existing taxes to which this Convention shall apply are:

(a) in Japan:

- (i) the income tax;
- (ii) the corporation tax;
- (iii) the special income tax for reconstruction;  
and
- (iv) the local corporation tax

(hereinafter referred to as "Japanese tax");

(b) in Spain:

- (i) the income tax on individuals;
- (ii) the corporation tax; and
- (iii) the income tax on non residents

(hereinafter referred to as "Spanish tax").

4. This Convention shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any significant changes that have been made in their taxation laws.

Article 3  
GENERAL DEFINITIONS

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

- (a) the term "Japan", when used in a geographical sense, means all the territory of Japan, including its territorial sea, in which the laws relating to Japanese tax are in force, and all the area beyond its territorial sea, including the seabed and subsoil thereof, over which Japan has sovereign rights in accordance with international law and in which the laws relating to Japanese tax are in force;
- (b) the term "Spain" means the Kingdom of Spain and, when used in a geographical sense, means the territory of the Kingdom of Spain, including internal waters, the air space, the territorial sea and any area outside the territorial sea upon which, in accordance with international law and on application of its domestic legislation, the Kingdom of Spain exercises or may exercise in the future jurisdiction or sovereign rights with respect to the seabed, its subsoil and superjacent waters, and their natural resources;
- (c) the terms "a Contracting State" and "the other Contracting State" mean Japan or Spain, as the context requires;
- (d) the term "person" includes an individual, a company and any other body of persons;
- (e) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;
- (f) the term "enterprise" applies to the carrying on of any business;

- (g) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
- (h) the term "international traffic" means any transport by a ship or aircraft except when the ship or aircraft is operated solely between places in a Contracting State and the enterprise that operates the ship or aircraft is not an enterprise of that Contracting State;
- (i) the term "competent authority" means:
  - (i) in Japan, the Minister of Finance or his authorised representative;
  - (ii) in Spain, the Minister of Finance or his authorised representative;
- (j) the term "national", in relation to a Contracting State, means:
  - (i) any individual possessing the nationality of that Contracting State; and
  - (ii) any legal person, partnership or association deriving its status as such from the laws in force in that Contracting State;
- (k) the term "business" includes the performance of professional services and of other activities of an independent character;
- (l) the term "recognised pension fund" of a Contracting State means an entity or arrangement established under the law of that Contracting State that is treated as a separate person under the taxation laws of that Contracting State and:
  - (i) that is established and operated exclusively or almost exclusively to administer or provide retirement benefits and ancillary or incidental benefits or other similar remuneration to individuals and that is regulated as such by that Contracting State or one of its political subdivisions or local authorities; or

- (ii) that is established and operated exclusively or almost exclusively to invest funds for the benefit of other recognised pension funds of that Contracting State.

Where an entity or arrangement established under the law of a Contracting State would constitute a recognised pension fund under clause (i) or (ii) if it were treated as a separate person under the taxation laws of that Contracting State, it shall be considered, for the purposes of the Convention, as a separate person treated as such under the taxation laws of that Contracting State and all the assets and income of the entity or arrangement shall be treated as assets held and income derived by that separate person and not by another person.

2. As regards the application of this Convention at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires or the competent authorities agree to a different meaning pursuant to the provisions of Article 24, have the meaning that it has at that time under the law of that Contracting State for the purposes of the taxes to which the Convention applies, any meaning under the applicable tax laws of that Contracting State prevailing over a meaning given to the term under other laws of that Contracting State.

#### Article 4 RESIDENT

1. For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the laws of that Contracting State, is liable to tax therein by reason of his domicile, residence, place of head or main office, place of management or any other criterion of a similar nature, and also includes that Contracting State and any political subdivision or local authority thereof as well as a recognised pension fund of that Contracting State. This term, however, does not include any person who is liable to tax in that Contracting State in respect only of income from sources in that Contracting State.

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

- (a) he shall be deemed to be a resident only of the Contracting State in which he has a permanent home available to him; if he has a permanent home available to him in both Contracting States, he shall be deemed to be a resident only of the Contracting State with which his personal and economic relations are closer (centre of vital interests);
- (b) if the Contracting State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either Contracting State, he shall be deemed to be a resident only of the Contracting State in which he has an habitual abode;
- (c) if he has an habitual abode in both Contracting States or in neither of them, he shall be deemed to be a resident only of the Contracting State of which he is a national;
- (d) if he is a national of both Contracting States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, the competent authorities of the Contracting States shall endeavour to determine by mutual agreement the Contracting State of which such person shall be deemed to be a resident for the purposes of this Convention, having regard to its place of head or main office, its place of effective management, the place where it is incorporated or otherwise constituted and any other relevant factors. In the absence of such agreement, such person shall not be entitled to any relief or exemption from tax provided by 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 an 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; and
- (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

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

4. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:

- (a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
- (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
- (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity;
- (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs (a) to (e),

provided that such activity or, in the case of subparagraph (f), the overall activity of the fixed place of business, is of a preparatory or auxiliary character.

5. Paragraph 4 shall not apply to a fixed place of business that is used or maintained by an enterprise if the same enterprise or a closely related enterprise carries on business activities at the same place or at another place in the same Contracting State and:

- (a) that place or other place constitutes a permanent establishment for the enterprise or the closely related enterprise under the provisions of this Article; or
- (b) the overall activity resulting from the combination of the activities carried on by the two enterprises at the same place, or by the same enterprise or closely related enterprises at the two places, is not of a preparatory or auxiliary character,

provided that the business activities carried on by the two enterprises at the same place, or by the same enterprise or closely related enterprises at the two places, constitute complementary functions that are part of a cohesive business operation.

6. Notwithstanding the provisions of paragraphs 1 and 2 but subject to the provisions of paragraph 7, where a person is acting in a Contracting State on behalf of an enterprise and, in doing so, habitually concludes contracts, or habitually plays the principal role leading to the conclusion of contracts that are routinely concluded without material modification by the enterprise, and these contracts are:

- (a) in the name of the enterprise; or
- (b) for the transfer of the ownership of, or for the granting of the right to use, property owned by that enterprise or that the enterprise has the right to use; or
- (c) for the provision of services by that enterprise,

that enterprise shall be deemed to have a permanent establishment in that Contracting State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business (other than a fixed place of business to which paragraph 5 would apply), would not make this fixed place of business a permanent establishment under the provisions of paragraph 4.



7. Paragraph 6 shall not apply where the person acting in a Contracting State on behalf of an enterprise of the other Contracting State carries on business in the first-mentioned Contracting State as an independent agent and acts for the enterprise in the ordinary course of that business. Where, however, a person acts exclusively or almost exclusively on behalf of one or more enterprises to which it is closely related, that person shall not be considered to be an independent agent within the meaning of this paragraph with respect to any such enterprise.

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

9. For the purposes of this Article, a person or enterprise is closely related to an enterprise if, based on all the relevant facts and circumstances, one has control of the other or both are under the control of the same persons or enterprises. In any case, a person or enterprise shall be considered to be closely related to an enterprise if one possesses directly or indirectly more than 50 per cent of the beneficial interest in the other (or, in the case of a company, more than 50 per cent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) or if another person or enterprise possesses directly or indirectly more than 50 per cent of the beneficial interest (or, in the case of a company, more than 50 per cent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) in the person and the enterprise or in the two enterprises.

#### Article 6 INCOME FROM IMMOVABLE PROPERTY

1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other Contracting State.

2. The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property.

4. Where a resident of a Contracting State owns rights which directly or indirectly entitle the owner of such rights to the enjoyment of immovable property situated in the other Contracting State, income derived by that resident from the direct use, letting or use in any other form of such entitlement to the enjoyment may be taxed in that other Contracting State.

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

#### Article 7 BUSINESS PROFITS

1. Profits of an enterprise of a Contracting State shall be taxable only in that Contracting State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits that are attributable to the permanent establishment in accordance with the provisions of paragraph 2 may be taxed in that other Contracting State.

2. For the purposes of this Article and Article 22, the profits that are attributable in each Contracting State to the permanent establishment referred to in paragraph 1 are the profits it might be expected to make, in particular in its dealings with other parts of the enterprise, if it were a separate and independent enterprise engaged in the same or similar activities under the same or similar conditions, taking into account the functions performed, assets used and risks assumed by the enterprise through the permanent establishment and through the other parts of the enterprise.

3. Where, in accordance with paragraph 2, a Contracting State adjusts the profits that are attributable to a permanent establishment of an enterprise of one of the Contracting States and taxes accordingly profits of the enterprise that have been charged to tax in the other Contracting State, that other Contracting State shall, to the extent necessary to eliminate double taxation on these profits, make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, the competent authorities of the Contracting States shall if necessary consult each other.

4. Where profits include items of income which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

#### Article 8 INTERNATIONAL SHIPPING AND AIR TRANSPORT

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

2. Notwithstanding the provisions of Article 2, an enterprise of a Contracting State shall be exempt in respect of its carrying on the operation of ships or aircraft in international traffic from, in the case of an enterprise of Spain, the enterprise tax of Japan and, in the case of an enterprise of Japan, the tax on economic activities of Spain (Impuesto sobre Actividades Económicas).

3. The provisions of paragraphs 1 and 2 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

#### Article 9 ASSOCIATED ENTERPRISES

1. Where

- (a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or
- (b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State,

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

2. Where a Contracting State includes in the profits of an enterprise of that Contracting State - and taxes accordingly - profits on which an enterprise of the other Contracting State has been charged to tax in that other Contracting State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned Contracting State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other Contracting State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other.

#### Article 10 DIVIDENDS

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other Contracting State.

2. However, dividends paid by a company which is a resident of a Contracting State may also be taxed in that Contracting State according to the laws of that Contracting State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed 5 per cent of the gross amount of the dividends.

3. Notwithstanding the provisions of paragraph 2, dividends paid by a company which is a resident of a Contracting State shall be taxable only in the other Contracting State if the beneficial owner of the dividends is a resident of that other Contracting State and is either:

- (a) a company which has owned directly or indirectly at least 10 per cent of the voting power of the company paying the dividends throughout a twelve month period that includes the date on which entitlement to the dividends is determined (for the purpose of computing that period, no account shall be taken of changes of ownership that would directly result from a corporate reorganisation, such as a merger or divisive reorganisation, of the company that is the beneficial owner of the dividends or that pays the dividends); or
- (b) a recognised pension fund, provided that such dividends are derived from the activities referred to in clause (i) or (ii) of subparagraph (1) of paragraph 1 of Article 3, and, in the case of a recognised pension fund of Spain, contributions made by an individual who is a resident of Spain thereto are deductible in computing his taxable income in Spain.

4. Notwithstanding the provisions of paragraphs 2 and 3, dividends which are deductible in computing the taxable income of the company paying the dividends in the Contracting State of which that company is a resident may be taxed in that Contracting State according to the laws of that Contracting State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the dividends.

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

6. The term "dividends" as used in this Article means income from shares, "jouissance" shares or "jouissance" rights, founders' shares or other rights, not being debt-claims, participating in profits, as well as income from other rights which is subjected to the same taxation treatment as income from shares by the laws of the Contracting State of which the company making the distribution is a resident.

7. The provisions of paragraphs 1, 2, 3 and 4 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident through a permanent establishment situated therein and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

8. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other Contracting State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other Contracting State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment situated in that other Contracting State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other Contracting State.

#### Article 11 INTEREST

1. Interest arising in a Contracting State and beneficially owned by a resident of the other Contracting State shall be taxable only in that other Contracting State.

2. Notwithstanding the provisions of paragraph 1, interest arising in a Contracting State that is determined by reference to receipts, sales, income, profits or other cash flow of the debtor or a related person, to any change in the value of any property of the debtor or a related person or to any dividend, partnership distribution or similar payment made by the debtor or a related person, or any other interest similar to such interest arising in a Contracting State, may be taxed in that Contracting State according to the laws of that Contracting State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

3. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures as well as other income that is subjected to the same taxation treatment as income from money lent by the taxation laws of the Contracting State in which the income arises. Income dealt with in Article 10 and penalty charges for late payment shall not, however, be regarded as interest for the purposes of this Article.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises through a permanent establishment situated therein and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

5. Interest shall be deemed to arise in a Contracting State when the payer is a resident of that Contracting State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment, then such interest shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

Article 12  
ROYALTIES

1. Royalties arising in a Contracting State and beneficially owned by a resident of the other Contracting State shall be taxable only in that other Contracting State.

2. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright including cinematographic films and films and recordings for radio or television broadcasting, or any patent, trade mark, design or model, plan, or secret formula or process, or for information concerning industrial, commercial or scientific experience.

3. The provisions of paragraph 1 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise through a permanent establishment situated therein and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

4. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

Article 13  
CAPITAL GAINS

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other Contracting State.



2. Gains from the alienation of any property, other than immovable property referred to in Article 6, forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise), may be taxed in that other Contracting State.

3. Gains that an enterprise of a Contracting State that operates ships or aircraft in international traffic derives from the alienation of such ships or aircraft, or of any property, other than immovable property referred to in Article 6, pertaining to the operation of such ships or aircraft, shall be taxable only in that Contracting State.

4. Gains derived by a resident of a Contracting State from the alienation of shares of a company or comparable interests, such as interests in a partnership or trust, may be taxed in the other Contracting State if, at any time during the 365 days preceding the alienation, these shares or comparable interests derived at least 50 per cent of their value directly or indirectly from immovable property, as defined in Article 6, situated in that other Contracting State.

5. Gains derived by a resident of a Contracting State from the alienation of rights which directly or indirectly entitle the owner of such rights to the enjoyment of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other Contracting State.

6. Gains from the alienation of any property, other than that referred to in paragraphs 1, 2, 3, 4 and 5, shall be taxable only in the Contracting State of which the alienator is a resident.

7. Where an individual ceased to be a resident of a Contracting State and has become a resident of the other Contracting State and where the unrealised capital appreciation of that individual's property was taxed in the first-mentioned Contracting State immediately before his ceasing to be a resident of the first-mentioned Contracting State, that other Contracting State shall, to the extent necessary to eliminate double taxation between the Contracting States on the capital appreciation of that property, make an appropriate adjustment to the taxable base of, or the amount of, tax charged therein on the gains derived by that individual from the alienation of that property.

Article 14  
INCOME FROM EMPLOYMENT

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

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

- (a) the recipient is present in the other Contracting State for a period or periods not exceeding in the aggregate 183 days in any twelve month period commencing or ending in the taxable year concerned, and
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other Contracting State, and
- (c) the remuneration is not borne by a permanent establishment which the employer has in the other Contracting State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived by a resident of a Contracting State in respect of an employment, as a member of the regular complement of a ship or aircraft, that is exercised aboard a ship or aircraft operated in international traffic, other than aboard a ship or aircraft operated solely within the other Contracting State, shall be taxable only in the first-mentioned Contracting State.

Article 15  
DIRECTORS' FEES

Directors' fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors, or of a similar organ, of a company which is a resident of the other Contracting State may be taxed in that other Contracting State.

Article 16  
ENTERTAINERS AND SPORTSPERSONS

1. Notwithstanding the provisions of Article 14, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson, from that resident's personal activities as such exercised in the other Contracting State, may be taxed in that other Contracting State.

2. Where income in respect of personal activities exercised by an entertainer or a sportsperson acting as such accrues not to the entertainer or sportsperson but to another person, that income may, notwithstanding the provisions of Article 14, be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.

Article 17  
PENSIONS

Subject to the provisions of paragraph 2 of Article 18, pensions and other similar remuneration beneficially owned by a resident of a Contracting State shall be taxable only in that Contracting State.

Article 18  
GOVERNMENT SERVICE

1. (a) Salaries, wages and other similar remuneration paid by a Contracting State or a political subdivision or local authority thereof to an individual in respect of services rendered to that Contracting State or political subdivision or local authority shall be taxable only in that Contracting State.
- (b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that other Contracting State and the individual is a resident of that other Contracting State who:
  - (i) is a national of that other Contracting State; or
  - (ii) did not become a resident of that other Contracting State solely for the purpose of rendering the services.

2. (a) Notwithstanding the provisions of paragraph 1, pensions and other similar remuneration paid by, or out of funds which are created by or to which contributions are made by, a Contracting State or a political subdivision or local authority thereof to an individual in respect of services rendered to that Contracting State or political subdivision or local authority shall be taxable only in that Contracting State.
- (b) However, such pensions and other similar remuneration shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that other Contracting State.
3. The provisions of Articles 14, 15, 16 and 17 shall apply to salaries, wages, pensions, and other similar remuneration in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or local authority thereof.

Article 19  
STUDENTS

Payments which a student or business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned Contracting State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that Contracting State, provided that such payments arise from sources outside that Contracting State. The exemption provided by this Article shall apply to a business apprentice only for a period not exceeding one year from the date on which he first begins his training in that Contracting State.

Article 20  
SILENT PARTNERSHIP

Notwithstanding any other provisions of this Convention, any income derived by a silent partner who is a resident of Spain in respect of a silent partnership (Tokumei Kumiai) contract or another similar contract may be taxed in Japan according to the laws of Japan, provided that such income arises in Japan and is deductible in computing the taxable income of the payer in Japan.

Article 21  
OTHER INCOME

1. Items of income beneficially owned by a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention shall be taxable only in that Contracting State.

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the beneficial owner of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein and the right or property in respect of which the income is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

3. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the income referred to in paragraph 1 exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the income shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

Article 22  
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, where a resident of Japan derives income from Spain which may be taxed in Spain in accordance with the provisions of this Convention, the amount of Spanish 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 the amount of the Japanese tax which is appropriate to that income.

2. In Spain, double taxation shall be avoided following either the provisions of the legislation of Spain or the following provisions in accordance with the legislation of Spain:

- (a) Where a resident of Spain derives income which, in accordance with the provisions of this Convention, may be taxed in Japan, Spain shall allow as a deduction from the tax on the income of that resident:
    - (i) an amount equal to Japanese tax paid in respect of that income in Japan;
    - (ii) in the case of dividends, an amount equal to the tax effectively paid by the company distributing the dividends, levied on those profits out of which the dividends are paid, in accordance with the legislation of Spain.
- Such deduction shall not, however, exceed that part of the tax on the income, as computed before the deduction is given, which is attributable to the income which may be taxed in Japan.
- (b) Where in accordance with any provision of the Convention income derived by a resident of Spain is exempt from tax in Spain, Spain may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.

Article 23  
NON-DISCRIMINATION

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

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other Contracting State than the taxation levied on enterprises of that other Contracting State carrying on the same activities. The provisions of this paragraph shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

3. Except where the provisions of paragraph 1 of Article 9, paragraph 6 of Article 11, paragraph 4 of Article 12 or paragraph 3 of Article 21 apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned Contracting State.

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

5. The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description imposed on behalf of a Contracting State or of its political subdivisions or local authorities.

Article 24  
MUTUAL AGREEMENT PROCEDURE

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

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

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Convention. They may also consult together for the elimination of double taxation in cases not provided for in the Convention.

4. The competent authorities of the Contracting States may communicate with each other directly, including through a joint commission consisting of themselves or their representatives, for the purpose of reaching an agreement in the sense of the preceding paragraphs of this Article.

5. Where,

- (a) under paragraph 1, a person has presented a case to the competent authority of a Contracting State on the basis that the actions of one or both of the Contracting States have resulted for that person in taxation not in accordance with the provisions of this Convention, and



- (b) the competent authorities are unable to reach an agreement to resolve that case pursuant to paragraph 2 within two years from the date when all the information required by the competent authorities in order to address the case has been provided to both competent authorities,

any unresolved issues arising from the case shall be submitted to arbitration if the person so requests in writing. These unresolved issues shall not, however, be submitted to arbitration if a decision on these issues has already been rendered by a court or administrative tribunal of either Contracting State. Unless a person directly affected by the case does not accept the mutual agreement that implements the arbitration decision, that decision shall be binding on both Contracting States and shall be implemented notwithstanding any time limits in the domestic laws of these Contracting States. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this paragraph.

- 6. (a) Where the competent authority of a Contracting State has suspended the procedure for resolving a case by mutual agreement pursuant to paragraphs 1 and 2 (hereinafter in this Article referred to as the "mutual agreement procedure") with respect to a case because a case with respect to one or more of the same issues is pending before a court or administrative tribunal, the period provided in subparagraph (b) of paragraph 5 shall stop running until the case pending before the court or administrative tribunal has been suspended or withdrawn.
- (b) Where a person who presented a case and the competent authority of a Contracting State have agreed to suspend the mutual agreement procedure, the period provided in subparagraph (b) of paragraph 5 shall stop running until the suspension has been lifted.

- (c) Where the competent authorities of the Contracting States agree that a person directly affected by the case has failed to provide in a timely manner any additional material information requested by either competent authority after the start of the period provided in subparagraph (b) of paragraph 5, that period shall be extended for an amount of time equal to the period beginning on the date by which the information was requested and ending on the date on which that information was provided.
7. (a) The following rules shall govern the appointment of arbitrators:
- (i) An arbitration panel shall consist of three individual arbitrators with expertise or experience in international tax matters.
  - (ii) Each of the competent authorities of the Contracting States shall appoint one arbitrator. The two arbitrators so appointed shall appoint the third arbitrator who shall serve as Chair of the arbitration panel. The Chair shall not be a national or resident of either Contracting State.
  - (iii) Each arbitrator appointed to the arbitration panel must be impartial and independent of the competent authorities, tax administrations, and ministries of finance of the Contracting States and of all persons directly affected by the case (as well as their advisors) at the time of accepting an appointment, maintain his or her impartiality and independence throughout the arbitration proceedings, and avoid any conduct for a reasonable period of time thereafter which may damage the appearance of impartiality and independence of the arbitrators with respect to the arbitration proceedings.

- (b) The competent authorities of the Contracting States shall ensure that arbitrators and their staff agree in writing, prior to their acting in the arbitration proceedings, to treat any information relating to the arbitration proceedings consistently with the confidentiality and non-disclosure obligations provided for in paragraph 2 of Article 25 and the applicable laws of the Contracting States.
  - (c) Solely for the purposes of the application of the provisions of this Article and Article 25 and of the domestic laws of the Contracting States related to the exchange of information, confidentiality, and administrative assistance, arbitrators and a maximum of three staff per arbitrator (and prospective arbitrators solely to the extent necessary to verify their ability to fulfil the requirements of arbitrators) shall be considered to be persons or authorities to whom information may be disclosed. Information received by the arbitration panel or prospective arbitrators and information that the competent authorities of the Contracting States receive from the arbitration panel shall be considered information that is exchanged under the provisions of paragraph 1 of Article 25.
- 8.
- (a) An arbitration decision shall be final.
  - (b) The arbitration decision shall not be binding on both Contracting States, if a final decision of the courts of one of the Contracting States holds that the arbitration decision is invalid. In such a case, the request for arbitration under paragraph 5 shall be considered not to have been made, and the arbitration proceedings shall be considered not to have taken place (except for the purposes of subparagraphs (b) and (c) of paragraph 7, and paragraph 11). In such a case, a new request for arbitration may be made unless the competent authorities agree that such a new request should not be permitted.
  - (c) An arbitration decision shall have no precedential value.
- 9.
- (a) If a person directly affected by the case does not accept the mutual agreement that implements the arbitration decision, the case shall not be eligible for any further consideration by the competent authorities of the Contracting States.

- (b) The mutual agreement that implements the arbitration decision on the case shall be considered not to be accepted by a person directly affected by the case if any person directly affected by the case does not, within 60 days after the date on which notification of the mutual agreement is sent to the person, withdraw all issues resolved in the mutual agreement implementing the arbitration decision from consideration by any court or administrative tribunal or otherwise terminate any pending court or administrative proceedings with respect to such issues in a manner consistent with that mutual agreement.

10. For the purposes of this Article, the mutual agreement procedure, as well as the arbitration proceedings, with respect to a case shall terminate if, at any time after the request for arbitration has been made and before the arbitration panel has delivered its decision to the competent authorities of the Contracting States:

- (a) the competent authorities of the Contracting States reach a mutual agreement to resolve the case pursuant to paragraph 2;
- (b) the person who presented the case withdraws the request for arbitration or the request for the mutual agreement procedure; or
- (c) a decision concerning the unresolved issues arising from the case is rendered by a court or administrative tribunal of one of the Contracting States.

11. Each of the competent authorities of the Contracting States shall bear its own expenses and those of its appointed arbitrator. Unless otherwise agreed by the competent authorities of the Contracting States, the cost of the Chair of the arbitration panel and other expenses associated with the conduct of the arbitration proceedings shall be borne by the competent authorities of the Contracting States in equal shares.

12. The provisions of paragraphs 5 to 11 shall not apply to the following cases:

- (a) cases falling within paragraph 3 of Article 4;
- (b) cases involving the application of paragraph 9 of Article 28;

- (c) cases involving the application of general anti-abuse rules contained in Articles 15 and 16 of the General Tax Law (Law No. 58 of 17th of December of 2003) of Spain and any subsequent rules replacing, amending or updating these rules;
- (d) cases involving the application of the provisions of the law of Japan which is substantially similar to the general anti-abuse rules of Spain referred to in subparagraph (c);
- (e) cases involving conduct for which a person directly affected by the case has been subject, by a final ruling resulting from legal or administrative proceedings of either Contracting State, to a penalty for tax fraud, wilful default and gross negligence;
- (f) cases falling within the provision of paragraph 1 of Article 9 and concerning items of income that are not taxed in a Contracting State because those items of income are excluded in the taxable base in that Contracting State or subject to an exemption or zero tax rate provided that such treatments are specific to those items of income under the tax law of that Contracting State; and
- (g) cases on which the competent authorities of the Contracting States have agreed that the cases are not suitable for resolution through the arbitration and have notified the person who has presented the case within the period provided for in subparagraph (b) of paragraph 5 and, if applicable, paragraph 6.

Article 25  
EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Convention or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Articles 1 and 2.

2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that Contracting State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. Notwithstanding the foregoing, information received by a Contracting State may be used for other purposes when such information may be used for such other purposes under the laws of both Contracting States and the competent authority of the Contracting State supplying the information authorises such use.

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

- (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
- (b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
- (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy (ordre public);
- (d) to obtain or provide information that would reveal confidential communications between a client and an attorney, solicitor or other admitted legal representative where such communications are:
  - (i) produced for the purposes of seeking or providing legal advice; or
  - (ii) produced for the purposes of use in existing or contemplated legal proceedings.

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

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

Article 26  
ASSISTANCE IN THE COLLECTION OF TAXES

1. The Contracting States shall lend assistance to each other in the collection of revenue claims. This assistance is not restricted by Articles 1 and 2. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of this Article.

2. The term "revenue claim" as used in this Article means an amount owed in respect of the following taxes, insofar as the taxation thereunder is not contrary to this Convention or any other instrument to which the Contracting States are parties, as well as interest, administrative penalties and costs of collection or conservancy related to such amount:

- (a) in the case of Japan:
  - (i) the taxes referred to in subparagraph (a) of paragraph 3 of Article 2;
  - (ii) the special corporation tax for reconstruction;
  - (iii) the consumption tax;
  - (iv) the local consumption tax;
  - (v) the inheritance tax; and
  - (vi) the gift tax;

- (b) in the case of Spain:
  - (i) the taxes referred to in subparagraph (b) of paragraph 3 of Article 2;
  - (ii) the wealth tax;
  - (iii) the value added tax;
  - (iv) the inheritance and gift tax;
  - (v) the general indirect tax for the Canary Islands;
  - (vi) the tax on imports and deliveries of goods in the Canary Islands; and
  - (vii) tax on production, services and imports in the cities of Ceuta and Melilla;
- (c) any other tax as may be agreed upon from time to time between the Governments of the Contracting States through an exchange of diplomatic notes;
- (d) any identical or substantially similar taxes that are imposed after the date of signature of the Convention in addition to, or in place of, the taxes covered by subparagraph (a), (b) or (c).

3. When a revenue claim of a Contracting State is enforceable under the laws of that Contracting State and is owed by a person who, at that time, cannot, under the laws of that Contracting State, prevent its collection, that revenue claim shall, at the request of the competent authority of that Contracting State, be accepted for purposes of collection by the competent authority of the other Contracting State. That revenue claim shall be collected by that other Contracting State in accordance with the provisions of its laws applicable to the enforcement and collection of its own taxes as if the revenue claim were a revenue claim of that other Contracting State that met the conditions allowing that other Contracting State to make a request under this paragraph.



4. When a revenue claim of a Contracting State is a claim in respect of which that Contracting State may, under its law, take measures of conservancy with a view to ensure its collection, that revenue claim shall, at the request of the competent authority of that Contracting State, be accepted for purposes of taking measures of conservancy by the competent authority of the other Contracting State. That other Contracting State shall take measures of conservancy in respect of that revenue claim in accordance with the provisions of its laws as if the revenue claim were a revenue claim of that other Contracting State even if, at the time when such measures are applied, the revenue claim is not enforceable in the first-mentioned Contracting State or is owed by a person who has a right to prevent its collection.

5. Notwithstanding the provisions of paragraphs 3 and 4, a revenue claim accepted by the competent authority of a Contracting State for purposes of paragraph 3 or 4 shall not, in that Contracting State, be subject to the time limits or accorded any priority applicable to a revenue claim under the laws of that Contracting State by reason of its nature as such. In addition, a revenue claim accepted by the competent authority of a Contracting State for the purposes of paragraph 3 or 4 shall not, in that Contracting State, have any priority applicable to that revenue claim under the laws of the other Contracting State.

6. Acts carried out by a Contracting State in the collection of a revenue claim accepted by the competent authority of that Contracting State for purposes of paragraph 3 or 4 which if they were carried out by the other Contracting State would have the effect of suspending or interrupting the time limits applicable to the revenue claim in accordance with the laws of that other Contracting State shall have such effect under the laws of that other Contracting State. The competent authority of the first-mentioned Contracting State shall inform the competent authority of the other Contracting State of having carried out such acts.

7. Proceedings with respect to the existence, validity or the amount of a revenue claim of a Contracting State shall not be brought before the courts or administrative bodies of the other Contracting State.

8. Where, at any time after a request has been made by the competent authority of a Contracting State under paragraph 3 or 4 and before the other Contracting State has collected and remitted the relevant revenue claim to the first-mentioned Contracting State, the relevant revenue claim ceases to be

- (a) in the case of a request under paragraph 3, a revenue claim of the first-mentioned Contracting State that is enforceable under the laws of that Contracting State and is owed by a person who, at that time, cannot, under the laws of that Contracting State, prevent its collection, or
- (b) in the case of a request under paragraph 4, a revenue claim of the first-mentioned Contracting State in respect of which that Contracting State may, under its laws, take measures of conservancy with a view to ensure its collection

the competent authority of the first-mentioned Contracting State shall promptly notify the competent authority of the other Contracting State of that fact and, at the option of the competent authority of the other Contracting State, the competent authority of the first-mentioned Contracting State shall either suspend or withdraw its request.

9. In no case shall the provisions of this Article be construed so as to impose on a Contracting State the obligation:

- (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
- (b) to carry out measures which would be contrary to public policy (ordre public);
- (c) to provide assistance if the other Contracting State has not pursued all reasonable measures of collection or conservancy, as the case may be, available under its laws or administrative practice;
- (d) to provide assistance in those cases where the administrative burden for that Contracting State is clearly disproportionate to the benefit to be derived by the other Contracting State.

#### Article 27

#### MEMBERS OF DIPLOMATIC MISSIONS AND CONSULAR POSTS

Nothing in this Convention shall affect the fiscal privileges of members of diplomatic missions or consular posts under the general rules of international law or under the provisions of special agreements.

Article 28  
ENTITLEMENT TO BENEFITS

1. Except as otherwise provided in this Article, a resident of a Contracting State shall not be entitled to a benefit that would otherwise be accorded under the provisions of paragraph 3 of Article 10, paragraph 1 of Article 11 or paragraph 1 of Article 12 unless such resident is a qualified person, as defined in paragraph 2, at the time when the benefit would otherwise be accorded.

2. A resident of a Contracting State shall be a qualified person at a time when a benefit would otherwise be accorded under the provisions of paragraph 3 of Article 10, paragraph 1 of Article 11 or paragraph 1 of Article 12 if, at that time, the resident is:

- (a) an individual;
- (b) that Contracting State, a political subdivision or local authority thereof, the central bank of that Contracting State, or an agency or instrumentality of that Contracting State or political subdivision or local authority;
- (c) a company or other entity, if the principal class of its shares is regularly traded on one or more recognised stock exchanges;
- (d) a recognised pension fund, if, at the beginning of the taxable year for which the claim to the benefit is made, at least 50 per cent of its beneficiaries, members or participants are individuals who are residents of either Contracting State; or
- (e) a person other than an individual, if, at that time and on at least half of the days of a twelve month period that includes that time, persons that are residents of that Contracting State and that are qualified persons under subparagraph (a), (b), (c) or (d) own, directly or indirectly, at least 50 per cent of the shares of the person.

3. (a) A resident of a Contracting State shall be entitled to a benefit that would otherwise be accorded under the provisions of paragraph 3 of Article 10, paragraph 1 of Article 11 or paragraph 1 of Article 12 with respect to an item of income described in the respective paragraph that is derived from the other Contracting State, regardless of whether the resident is a qualified person, if the resident is engaged in the active conduct of a business in the first-mentioned Contracting State, and the income derived from the other Contracting State emanates from, or is incidental to, that business. For purposes of this paragraph, the term "active conduct of a business" shall not include the following activities or any combination thereof:
- (i) operating as a holding company;
  - (ii) providing overall supervision or administration of a group of companies;
  - (iii) providing group financing (including cash pooling);
  - (iv) making or managing investments, unless these activities are carried on by a bank, insurance enterprise or registered securities dealer in the ordinary course of its business as such; or
  - (v) holding or managing intangible property without producing or developing it.
- (b) If a resident of a Contracting State derives an item of income from a business activity conducted by that resident in the other Contracting State, or derives an item of income arising in the other Contracting State from a connected person, the conditions described in subparagraph (a) shall be considered to be satisfied with respect to such item of income only if the business activity carried on by the resident in the first-mentioned Contracting State to which the item of income is related is substantial in relation to the same or complementary business activity carried on by the resident or such connected person in the other Contracting State. Whether a business activity is substantial for the purposes of this paragraph shall be determined based on all the facts and circumstances.

- (c) For purposes of applying this paragraph, business activities conducted by connected persons with respect to a resident of a Contracting State shall be deemed to be conducted by such resident.

4. A resident of a Contracting State that is not a qualified person shall nevertheless be entitled to a benefit that would otherwise be accorded under the provisions of paragraph 3 of Article 10, paragraph 1 of Article 11 or paragraph 1 of Article 12 with respect to an item of income described in the respective paragraph if:

- (a) in the case of a recognised pension fund, at the beginning of the taxable year for which the claim to the benefit is made, at least 75 per cent of its beneficiaries, members or participants are individuals who are equivalent beneficiaries; or
- (b) in all other cases, at the time when the benefit would otherwise be accorded and on at least half of the days of a twelve month period that includes that time, persons that are equivalent beneficiaries own, directly or indirectly, at least 75 per cent of the shares of the resident.

5. (a) A company that is a resident of a Contracting State that functions as a headquarters company for a multinational corporate group consisting of such company and its direct and indirect subsidiaries shall be entitled to a benefit that would otherwise be accorded under the provisions of paragraph 3 of Article 10, paragraph 1 of Article 11 or paragraph 1 of Article 12 with respect to an item of income described in the respective paragraph that is derived from the other Contracting State, regardless of whether the resident is a qualified person, if the income derived from that other Contracting State emanates from, or is incidental to, the business referred to in clause (ii) of subparagraph (b).

(b) A company, being a resident of a Contracting State, shall be considered a headquarters company for a multinational corporate group for the purpose of subparagraph (a) only if:

- (i) such company provides a substantial portion of the overall supervision and administration of the group or provides financing for the group;

- (ii) the group consists of companies which are residents of, and are engaged in the active conduct of a business in, at least four states, and the businesses carried on in each of the four states (or four groupings of states) generate at least 5 per cent of the gross income of the group;
  - (iii) the businesses of the group that are carried on in any one state other than that Contracting State generate less than 50 per cent of the gross income of the group;
  - (iv) no more than 50 per cent of such company's gross income is derived from the other Contracting State;
  - (v) such company has, and exercises, independent discretionary authority to carry out the functions referred to in clause (i); and
  - (vi) such company is subject to the same income taxation rules in that Contracting State as persons described in paragraph 3.
- (c) For the purposes of subparagraph (b), the requirements of clause (ii), (iii) or (iv) of that subparagraph shall be deemed to be fulfilled for the taxable period in which the item of income is derived if the required ratios are met when averaging the gross income of the preceding four taxable periods.

6. If a resident of a Contracting State is neither a qualified person, nor entitled to a benefit under paragraph 3, 4 or 5, the competent authority of the Contracting State in which a benefit is denied under the preceding paragraphs of this Article may, nevertheless, grant a benefit that would otherwise be accorded under the provisions of paragraph 3 of Article 10, paragraph 1 of Article 11 or paragraph 1 of Article 12 with respect to an item of income described in the respective paragraph, taking into account the object and purpose of this Convention, but only if such resident demonstrates to the satisfaction of such competent authority that neither its establishment, acquisition or maintenance, nor the conduct of its operations, had as one of its principal purposes the obtaining of such benefit. The competent authority of the Contracting State to which a request has been made under this paragraph by a resident of the other Contracting State shall consult with the competent authority of that other Contracting State before either granting or denying the request.

7. For the purposes of this Article:

- (a) the term "principal class of shares" means the class or classes of shares of a company or entity which represents the majority of the aggregate vote and value of the company or entity;
- (b) with respect to entities that are not companies, the term "shares" means interests that are comparable to shares;
- (c) the term "recognised stock exchange" means:
  - (i) any stock exchange established and regulated as such under the laws of either Contracting State; and
  - (ii) any other stock exchange agreed upon by the competent authorities of the Contracting States;
- (d) two persons shall be "connected persons" if one owns, directly or indirectly, at least 50 per cent of the beneficial interest in the other (or, in the case of a company, at least 50 per cent of the aggregate vote and value of the company's shares) or another person owns, directly or indirectly, at least 50 per cent of the beneficial interest (or, in the case of a company, at least 50 per cent of the aggregate vote and value of the company's shares) in each person; in any case, a person shall be connected to another if, based on all the relevant facts and circumstances, one has control of the other or both are under the control of the same person or persons;

- (e) the term "equivalent beneficiary" means any person who would be entitled to a benefit with respect to an item of income accorded by a Contracting State under the domestic law of that Contracting State, this Convention or any other international agreement which is equivalent to the benefit to be accorded to that item of income under the provisions of paragraph 3 of Article 10, paragraph 1 of Article 11 or paragraph 1 of Article 12; for the purposes of determining whether a person is an equivalent beneficiary with respect to dividends received by a company, the person shall be deemed to be a company and to hold the same voting power of the company paying the dividends as such voting power which the company claiming the benefit with respect to the dividends holds; and
- (f) the term "gross income" means gross receipts of a person as determined in the Contracting State of which the person is a resident for the taxable period that includes the time when the benefit would otherwise be accorded, reduced by the direct costs of generating such receipts.

8. (a) Where:

- (i) an enterprise of a Contracting State derives income from the other Contracting State and the first-mentioned Contracting State treats such income as attributable to a permanent establishment of the enterprise situated in a third jurisdiction; and
- (ii) the profits attributable to that permanent establishment are exempt from tax in the first-mentioned Contracting State,

the benefits under this Convention shall not apply to any item of income on which the tax in the third jurisdiction is less than 60 per cent of the tax that would be imposed in the first-mentioned Contracting State on that item of income if that permanent establishment were situated in the first-mentioned Contracting State. In such a case, any income to which the provisions of this paragraph apply shall remain taxable according to the domestic law of the other Contracting State, notwithstanding any other provisions of the Convention.



- (b) The provisions of subparagraph (a) shall not apply if the income derived from the other Contracting State described in that subparagraph is derived in connection with or is incidental to the active conduct of a business carried on through the permanent establishment (other than the business of making, managing or simply holding investments for the enterprise's own account, unless these activities are banking, insurance or securities activities carried on by a bank, insurance enterprise or registered securities dealer, respectively).
- (c) If the benefits under the Convention are denied pursuant to the provisions of subparagraph (a) with respect to an item of income derived by a resident of a Contracting State, the competent authority of the other Contracting State may, nevertheless, grant these benefits with respect to that item of income if, in response to a request by such resident, such competent authority determines that granting such benefits is justified in light of the reasons such resident did not satisfy the requirements of subparagraphs (a) and (b). The competent authority of the Contracting State to which a request has been made under the preceding sentence by a resident of the other Contracting State shall consult with the competent authority of that other Contracting State before either granting or denying the request.

9. Notwithstanding the other provisions of this Convention, a benefit under the Convention shall not be granted in respect of an item of income if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of the Convention.

10. Where under any provisions of this Convention income derived by a resident of a Contracting State is relieved or exempted from tax in the other Contracting State and, under the law of the first-mentioned Contracting State, that resident is subjected to tax by reference to the amount thereof which is remitted to or received in that Contracting State and not by reference to the full amount thereof, then the relief or exemption provided under the Convention in the other Contracting State shall apply only to so much of such income as is taxed in the first-mentioned Contracting State.

#### Article 29 HEADINGS

The headings of the Articles of this Convention are inserted for convenience of reference only and shall not affect the interpretation of the Convention.

#### Article 30 ENTRY INTO FORCE

1. Each of the Contracting States shall send in writing and through diplomatic channels to the other Contracting State the notification confirming that its internal procedures necessary for the entry into force of this Convention have been completed. The Convention shall enter into force on the first day of the third month following the month of receipt of the latter notification.

2. This Convention shall have effect:

- (a) with respect to taxes levied on the basis of a taxable year, for taxes for any taxable years beginning on or after 1 January in the calendar year next following that in which the Convention enters into force; and
- (b) with respect to taxes levied not on the basis of a taxable year, for taxes levied on or after 1 January in the calendar year next following that in which the Convention enters into force.

3. Notwithstanding the provisions of paragraph 2, the provisions of Articles 25 and 26 shall have effect from the date of entry into force of this Convention without regard to the date on which the taxes are levied or the taxable year to which the taxes relate.

4. The Convention between Japan and the Spanish State for the Avoidance of Double Taxation with respect to Taxes on Income, with Protocol, signed at Madrid on 13 February, 1974 (hereinafter referred to as "the prior Convention") shall cease to be applicable from the date upon which this Convention applies in respect of the taxes to which this Convention applies in accordance with the provisions of paragraphs 2 and 3.

5. Notwithstanding the entry into force of this Convention, an individual who is entitled to the benefits of Article 20 of the prior Convention at the time of the entry into force of this Convention shall continue to be entitled to such benefits until such time as the individual would have ceased to be entitled to such benefits if the prior Convention had remained in force.

6. The prior Convention shall terminate on the last date on which it applies in accordance with the provisions of the preceding paragraphs of this Article.

#### Article 31 TERMINATION

This Convention shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Convention, through diplomatic channels, by giving written notice of termination to the other Contracting State at least six months before the end of any calendar year beginning on or after the expiration of a period of five years from the date of entry into force of the Convention. In such event, the Convention shall cease to have effect:

- (a) with respect to taxes levied on the basis of a taxable year, for taxes for any taxable years beginning on or after 1 January in the calendar year next following that in which the notice is given; and
- (b) with respect to taxes levied not on the basis of a taxable year, for taxes levied on or after 1 January in the calendar year next following that in which the notice is given.

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

DONE in duplicate at Madrid this sixteenth day of October, 2018 in Japanese, Spanish and English languages, all texts being equally authentic. In case of any divergence of interpretation among the texts, it shall be resolved in accordance with the English text.

For Japan:

安倍晋三

For the Kingdom of Spain:

P. Sánchez

## PROTOCOL

At the moment of signing the Convention between Japan and the Kingdom of Spain for the Elimination of Double Taxation with respect to Taxes on Income and the Prevention of Tax Evasion and Avoidance (hereinafter referred to as "the Convention"), Japan and the Kingdom of Spain have agreed upon the following provisions, which shall be an integral part of the Convention.

1. With reference to Article 2 of the Convention:

For the purposes of that Article, in the case of Spain, the term "a Contracting State" referred to in paragraph 1 of that Article shall include the Regions of Spain ("Comunidades Autónomas" and "Ciudades Autónomas").

2. It is understood that nothing in the Convention shall be construed as restricting, in any manner, the application of any provisions of the law of a Contracting State which are designed to prevent the avoidance or evasion of taxes unless the application of those provisions results in taxation not in accordance with the provisions of the Convention.

3. It is understood that nothing in the Convention shall be construed as restricting the application of any of the following provisions:

- (a) in the case of Japan, Section 4-3 of Chapter II and Sections 7-4 and 24 of Chapter III of the Law on Special Measures Concerning Taxation (Law No. 26 of 1957);
- (b) in the case of Spain, Article 100 of the Corporate Income Tax Law (Law No. 27 of 27th of November of 2014),

including those as may be amended from time to time without changing the general principle thereof.

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

DONE in duplicate at Madrid this sixteenth day of October, 2018 in Japanese, Spanish and English languages, all texts being equally authentic. In case of any divergence of interpretation among the texts, it shall be resolved in accordance with the English text.

For Japan:

安倍晋三

For the Kingdom of Spain:

P. Sánchez