

AGREEMENT
BETWEEN JAPAN AND THE FEDERAL REPUBLIC OF GERMANY
FOR THE ELIMINATION OF DOUBLE TAXATION
WITH RESPECT TO TAXES ON INCOME AND TO CERTAIN OTHER TAXES
AND THE PREVENTION OF TAX EVASION AND AVOIDANCE

Japan and the Federal Republic of Germany,

Desiring to further develop their economic relationship and to enhance their cooperation in tax matters,

Intending to conclude a new Agreement for the elimination of double taxation with respect to taxes on income and to certain other taxes 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 Agreement for the indirect benefit of residents of third States),

Have agreed as follows:

Article 1
Persons Covered

1. This Agreement shall apply to persons who are residents of one or both of the Contracting States.
2. For the purposes of this Agreement, 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 the income is treated, for purposes of taxation by that Contracting State, as the income of a resident of that Contracting State. In no case shall the provisions of this paragraph be construed so as to restrict in any way a Contracting State's right to tax the residents of that Contracting State. For the purposes of this paragraph, the term "fiscally transparent" means situations where, under the tax law of a Contracting State, income, or part thereof, of an entity or arrangement is not taxed at the level of the entity or arrangement but at the level of the persons who have an interest in that entity or arrangement.

Article 2
Taxes Covered

1. This Agreement shall apply to the following taxes:
 - (a) in the case of Japan:
 - (i) the income tax;
 - (ii) the corporation tax;
 - (iii) the special income tax for reconstruction;
 - (iv) the local corporation tax;
 - (v) the local inhabitant taxes; and
 - (vi) the enterprise tax(hereinafter referred to as "Japanese tax");
and
 - (b) in the case of the Federal Republic of Germany:
 - (i) the income tax (*Einkommensteuer*);
 - (ii) the corporate income tax (*Körperschaftsteuer*);
 - (iii) the trade tax (*Gewerbesteuer*); and
 - (iv) the solidarity surcharge (*Solidaritätszuschlag*)(hereinafter referred to as "German tax").

2. This Agreement shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of the Agreement in addition to, or in place of, those referred to in paragraph 1. The competent authorities of the Contracting States shall notify each other of any significant changes that have been made in their respective taxation laws, within a reasonable period of time after such changes.

Article 3
General Definitions

1. For the purposes of this Agreement, 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 "Federal Republic of Germany", when used in a geographical sense, means the territory of the Federal Republic of Germany as well as the area of the seabed, its subsoil and the superjacent water column adjacent to the territorial sea, insofar as the Federal Republic of Germany exercises sovereign rights and jurisdiction in conformity with international law and its national legislation for the purpose of exploring, exploiting, conserving and managing the living and non-living natural resources or for the production of energy from renewable sources;
- (c) the terms "a Contracting State" and "the other Contracting State" mean Japan or the Federal Republic of Germany, 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 term "business" includes the performance of professional services and of other activities of an independent character;
- (h) 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;

- (i) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
- (j) the term "national" means:
 - (i) in the case of Japan, any individual possessing the nationality of Japan and any legal person, partnership or association deriving its status as such from the laws in force in Japan; and
 - (ii) in the case of the Federal Republic of Germany, any German within the meaning of the Basic Law (*Grundgesetz*) for the Federal Republic of Germany and any legal person, partnership or association deriving its status as such from the laws in force in the Federal Republic of Germany;
- (k) the term "competent authority" means:
 - (i) in the case of Japan, the Minister of Finance or his authorised representative; and
 - (ii) in the case of the Federal Republic of Germany, the Federal Ministry of Finance or the agency to which it has delegated its powers.

2. As regards the application of this Agreement at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the laws of that Contracting State for the purposes of the taxes to which the Agreement 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 Agreement, 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 management, place of head or main office or any other criterion of a similar nature, and also includes that Contracting State, any federal state (*Land*) thereof and any political subdivision or local authority thereof. 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 Agreement, having regard to its place of effective management, its place of head or main office, 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 Agreement.

Article 5
Permanent Establishment

1. For the purposes of this Agreement, 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 of a preparatory or auxiliary character;
- (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person - other than an agent of an independent status to whom the provisions of paragraph 6 apply - is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the 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, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

6. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that Contracting State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

7. 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.

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 laws 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. The provisions of paragraphs 1 and 3 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 if the competent authority of that other Contracting State agrees with the adjustment made by the first-mentioned Contracting State; if the competent authority of that other Contracting State does not so agree, the competent authorities of the Contracting States shall endeavour to eliminate any double taxation resulting therefrom by mutual agreement.

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

Article 8 Shipping and Air Transport

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

2. For the purposes of this Article, profits from the operation of ships or aircraft in international traffic include:

- (a) profits from the rental on a bareboat basis of ships or aircraft; and
- (b) profits from the use, maintenance or rental of containers (including trailers and related equipment for the transport of containers) used for the transport of goods or merchandise;

where such rental or such use, maintenance or rental, as the case may be, is incidental to the operation of ships or aircraft in international traffic.

3. The provisions of the preceding paragraphs of this Article 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 Agreement and the competent authorities of the Contracting States shall, if necessary, consult each other.

3. Notwithstanding the provisions of paragraph 1, a Contracting State shall not change the profits of an enterprise of that Contracting State in the circumstances referred to in that paragraph after ten years from the end of the taxable year in which the profits that would be subject to such change would, but for the conditions referred to in that paragraph, have accrued to that enterprise. The provisions of this paragraph shall not apply in the case of fraud or wilful default or when the competent authority of a Contracting State notifies within that ten-year period the competent authority of the other Contracting State of the enterprise of that other Contracting State whose tax liability to that other Contracting State may be directly affected by the taxation provided for in paragraph 1 on an enterprise of the first-mentioned Contracting State by that Contracting State.

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:

- (a) 5 per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) that has owned directly, for the period of six months ending on the date on which entitlement to the dividends is determined, at least 10 per cent of the voting shares of the company paying the dividends;
- (b) 15 per cent of the gross amount of the dividends in all other cases.

3. Notwithstanding the provisions of paragraph 2, dividends shall not be taxed in the Contracting State of which the company paying the dividends is a resident if the beneficial owner of the dividends is a resident of the other Contracting State and is a company (other than a partnership) that has owned directly, for the period of eighteen months ending on the date on which entitlement to the dividends is determined, at least 25 per cent of the voting shares of the company paying the dividends.

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

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

6. The provisions of paragraphs 1, 2 and 3 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.

7. 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. 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, and all other income that is subjected to the same taxation treatment as income from money lent by the tax laws of the Contracting State in which the income arises. This term, however, does not include income dealt with in Article 10. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

3. The provisions of paragraph 1 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.

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 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 Agreement.

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 of literary, artistic or scientific work including cinematograph films, 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 Agreement.

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 derived by a resident of a Contracting State from the alienation of shares or interests in a company, partnership or trust deriving at least 50 per cent of the value of its property directly or indirectly from immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other Contracting State.

3. Gains from the alienation of any property, other than immovable property, 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.

4. Gains derived by an enterprise of a Contracting State from the alienation of ships or aircraft operated by that enterprise in international traffic or any property, other than immovable property, pertaining to the operation of such ships or aircraft shall be taxable only in that Contracting State.

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

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 that 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 that other Contracting State, and
- (c) the remuneration is not borne by a permanent establishment which the employer has in that other Contracting State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State may be taxed in that 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 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 and Other Similar Payments

1. Subject to the provisions of paragraph 2 of Article 18, pensions and other similar remuneration arising in a Contracting State and paid to a resident of the other Contracting State or payments under the social security legislation of the first-mentioned Contracting State paid to a resident of the other Contracting State may be taxed in the first-mentioned Contracting State.

2. Notwithstanding the provisions of paragraph 1, recurrent or non-recurrent payments made by a Contracting State, a federal state (*Land*) thereof or a political subdivision or local authority thereof to a person who is a resident of the other Contracting State as compensation for political persecution or for an injury or damage sustained as a result of war (including restitution payments) shall be taxable only in the first-mentioned Contracting State.

Article 18
Government Service

1. (a) Salaries, wages and other similar remuneration paid by a Contracting State, a federal state (*Land*) thereof or a political subdivision or local authority thereof to an individual in respect of services rendered to that Contracting State, federal state (*Land*) 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, a federal state (*Land*) thereof or a political subdivision or local authority thereof to an individual in respect of services rendered to that Contracting State, federal state (*Land*) 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, a federal state (*Land*) thereof or a political subdivision or local authority thereof.
- 4. The provisions of paragraphs 1 and 2 shall apply *mutatis mutandis* to salaries, wages, pensions, and other similar remuneration paid by the Goethe Institute (*Goethe-Institut*), the German Academic Exchange Service (*Deutscher Akademischer Austauschdienst*) or other similar institutions as may be agreed upon between the Governments of the Contracting States through an exchange of diplomatic notes to an individual in respect of services rendered to them. If, however, such remuneration is not taxed in the Contracting State where the institution was founded, the provisions of Article 14, 15, 16 or 17, as the case may be, shall apply.

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 the first-mentioned Contracting State, provided that such payments arise from sources outside the first-mentioned 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 the first-mentioned Contracting State.

Article 20
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 Agreement 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 resident referred to in paragraph 1 and the payer 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 between them 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 Agreement.

Article 21
Entitlement to Benefits

1. Except as otherwise provided in this Article, a resident of a Contracting State that derives income from the other Contracting State shall be entitled to all the benefits under this Agreement for a taxable year only if such resident is a qualified person as defined in paragraph 2 and satisfies any other specified conditions in the relevant provisions of the Agreement for the obtaining of such benefits.

2. A resident of a Contracting State is a qualified person for a taxable year only if such resident is either:

- (a) an individual;
- (b) a qualified governmental entity;
- (c) a company, if its principal class of shares is listed or registered and is regularly traded on one or more recognised stock exchanges;
- (d) a pension fund or pension scheme, provided that, as of the end of the prior taxable year, more than 50 per cent of the beneficiaries, members or participants of that pension fund or pension scheme are individuals who are residents of either Contracting State;
- (e) a person established under the laws of that Contracting State and operated exclusively for a religious, charitable, educational, scientific, artistic, cultural or public purpose, only if all or part of its income may be exempt from tax under the laws of that Contracting State; or
- (f) a person other than an individual, if at least 65 per cent of the voting shares or other beneficial interests of the person are owned, directly or indirectly, by residents of that Contracting State that are qualified persons by reason of subparagraph (a), (b), (c), (d) or (e).

3. Notwithstanding that a resident of a Contracting State may not be a qualified person, that resident shall be entitled to a benefit under this Agreement in respect of an item of income derived from the other Contracting State if that resident satisfies any other specified conditions in the relevant provisions of the Agreement for the obtaining of such benefit and if:

- (a) at least 65 per cent of the voting shares or other beneficial interests of the person are owned, directly or indirectly, by persons who, if they had derived the item of income directly, would, under the Agreement, be entitled to equivalent or more favourable benefits; or
- (b) at least 90 per cent of the voting shares or other beneficial interests of the person are owned, directly or indirectly, by persons who, if they had derived the item of income directly, would, under the Agreement or an agreement that the Contracting State from which the item of income arise has concluded with another State, be entitled to equivalent or more favourable benefits.

4. Where the provisions of subparagraph (f) of paragraph 2 or paragraph 3 apply:

- (a) in respect of taxation by withholding at source, a resident of a Contracting State shall be considered to satisfy the conditions described in that subparagraph or that paragraph for the taxable year in which payment of an item of income is made if such resident satisfies those conditions during the twelve month period preceding the date of the payment (or, in the case of dividends, the date on which entitlement to the dividends is determined);
- (b) in all other cases, a resident of a Contracting State shall be considered to satisfy the conditions described in that subparagraph or that paragraph for a taxable year if such resident satisfies those conditions on at least half the days of the taxable year.

5. (a) Notwithstanding that a resident of a Contracting State may not be a qualified person, that resident shall be entitled to a benefit under this Agreement in respect of an item of income derived from the other Contracting State if:

- (i) that resident is engaged in the active conduct of a business (other than the business of making or managing investments for that resident's own account, unless the business is banking, insurance or securities business carried on by a bank, insurance company or securities dealer) in the first-mentioned Contracting State;

- (ii) the income derived from that other Contracting State is derived in connection with, or is incidental to, that business; and
 - (iii) that resident satisfies any other specified conditions in the relevant provisions of the Agreement for the obtaining of such benefit.
- (b) If a resident of a Contracting State derives an item of income from a business carried on by that resident in the other Contracting State or derives an item of income arising in the other Contracting State from a person that has with that resident a relationship described in subparagraph (a) or (b) of paragraph 1 of Article 9, the conditions described in subparagraph (a) of this paragraph shall be considered to be satisfied with respect to such item of income only if the business carried on in the first-mentioned Contracting State is substantial in relation to the business carried on in that other Contracting State. Whether such business is substantial for the purpose of this paragraph shall be determined on the basis of all the facts and circumstances.
- (c) In determining whether a person is engaged in the active conduct of a business in a Contracting State under subparagraph (a), the business conducted by a partnership in which that person is a partner, and the business conducted by a person connected to such person only to the extent that both persons are engaged in the same or complementary lines of business, shall be deemed to be conducted by such person. A person shall be connected to another if one owns, directly or indirectly, at least 50 per cent of the beneficial interests in the other (or, in the case of a company, at least 50 per cent of the voting shares of the company) or another person owns, directly or indirectly, at least 50 per cent of the beneficial interests (or, in the case of a company, at least 50 per cent of the voting shares of the company) in each person. In any case, a person shall be considered to be connected to another if, on the basis of all the facts and circumstances, one has control of the other or both are under the control of the same person or persons.

6. A resident of a Contracting State that is neither a qualified person nor entitled under paragraph 3 or 5 to the benefits referred to in those paragraphs shall, nevertheless, be granted all the benefits under this Agreement or a benefit under the Agreement in respect of an item of income derived from the other Contracting State if, upon request from that resident, the competent authority of that other Contracting State determines, in accordance with its domestic law or administrative practice, that the establishment, acquisition or maintenance of such resident and the conduct of its operations are considered as not having the obtaining of such benefits as one of the principal purposes. 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 will consult with the competent authority of that other Contracting State before rejecting the request.

7. For the purposes of this Article:

- (a) the term "qualified governmental entity" means the Government of a Contracting State, of a federal state (*Land*) thereof, or of any political subdivision or local authority thereof, the Bank of Japan, the Federal Bank of Germany (*Deutsche Bundesbank*) or a person that is wholly owned, directly or indirectly, by the Government of a Contracting State, of a federal state (*Land*) thereof, or of a political subdivision or local authority thereof;
- (b) the term "principal class of shares" means the class or classes of shares of a company which represent a majority of the voting shares of the company;
- (c) the term "recognised stock exchange" means:
 - (i) any stock exchange established under the terms of the Financial Instruments and Exchange Law (Law No. 25 of 1948) of Japan;
 - (ii) any regulated market pursuant to the Markets in Financial Instruments Directive 2004/39/EC (as amended) or any successor Directive;
 - (iii) Hong Kong Exchanges and Clearing, the NASDAQ System, the New York Stock Exchange, Singapore Exchange, SIX Swiss Exchange and the Taiwan Stock Exchange; and

- (iv) any other stock exchange which the competent authorities of the Contracting States agree to recognise for the purposes of this Article;
- (d) the term "pension fund or pension scheme" means any person that:
 - (i) was constituted and is operated exclusively or almost exclusively to administer or provide pensions or other similar benefits; or
 - (ii) was constituted and is operated to invest funds for the benefit of persons referred to in clause (i), provided that substantially all the income of that person is derived from investments made for the benefit of these persons.

8. Notwithstanding the other provisions of this Agreement, a benefit under the Agreement 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 Agreement.

9. Nothing in this Agreement 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 as long as those provisions are in accordance with the object and purpose of the Agreement.

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 the Federal Republic of Germany which may be taxed in the Federal Republic of Germany in accordance with the provisions of this Agreement, the amount of German 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. Where a resident of the Federal Republic of Germany derives income which, in accordance with the provisions of this Agreement, may be taxed in Japan or is exempt from Japanese tax under the provisions of paragraph 3 of Article 10, the following shall apply:

- (a) Except as provided in subparagraph (c), the income shall be exempted from the basis upon which German tax is imposed. In the case of dividends, this applies only to such dividends as are paid to a company (other than a partnership) being a resident of the Federal Republic of Germany by a company being a resident of Japan at least 10 percent of the capital of which is owned directly by the company being a resident of the Federal Republic of Germany. The exemption from the basis provided by the first sentence of this subparagraph shall not apply to dividends paid by a tax exempt company, to dividends that the distributing company may deduct for Japanese tax purposes or to dividends that are attributed under the law of the Federal Republic of Germany to a person that is not a company being a resident of the Federal Republic of Germany.
- (b) The Federal Republic of Germany retains the right to take into account in the determination of its rate of tax the items of income which under the provisions of the Agreement are exempted from German tax.
- (c) With respect to the following items of income, there shall be allowed as a credit against German tax on income, subject to the provisions of German tax law regarding credit for foreign tax, Japanese tax paid under the laws of Japan and in accordance with the provisions of the Agreement on such items of income:
 - (i) dividends within the meaning of Article 10 to which subparagraph (a) does not apply;
 - (ii) capital gains to which paragraph 2 of Article 13 applies;
 - (iii) income to which Article 15 applies;
 - (iv) income to which Article 16 applies;
 - (v) income to which paragraph 1 of Article 17 applies.

For the purposes of application of this subparagraph, income of a resident of the Federal Republic of Germany that, under the Agreement, may be taxed in Japan shall be deemed to be income from sources within Japan.

- (d) The provisions of subparagraph (a) are to be applied to items of profits or income within the meaning of Article 7 and Article 10 and to gains from the alienation of property within the meaning of paragraph 3 of Article 13 only to the extent that the items of profits, income or gains were derived from the production, processing, working or assembling of goods and merchandise, the exploration and extraction of natural resources, banking and insurance, trade or the rendering of services or if the items of profits, income or gains are economically attributable to these activities. This applies only if a business undertaking that is adequately equipped for its business purpose exists. If the provisions of subparagraph (a) are not to be applied, double taxation shall be eliminated by means of a tax credit as provided for in subparagraph (c).
- (e) Notwithstanding subparagraph (a), double taxation shall be eliminated by a tax credit as provided for in subparagraph (c), if:
 - (i) in the Contracting States items of income or elements thereof are placed under different provisions of the Agreement and if, as a consequence of this different placement, such income would be subject to double taxation, non-taxation or lower taxation and in the case of double taxation this conflict cannot be resolved by a procedure pursuant to paragraph 2 or 3 of Article 24;
 - (ii) Japan may, under the provisions of the Agreement, tax items of income or elements thereof but does not actually do so; or

- (iii) after consultation, the Federal Republic of Germany notifies Japan through diplomatic channels of items of income or elements thereof to which it intends to apply the provisions on tax credit under subparagraph (c). Double taxation is then eliminated for the notified items of income or elements thereof by allowing a tax credit from the first day of January in the calendar year next following that in which the notification was made.

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. This provision 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. This provision 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 4 of Article 11, paragraph 4 of Article 12 or paragraph 3 of Article 20 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 purposes 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 by a Contracting State, a federal state (*Land*) thereof or a political subdivision or local authority thereof.

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 Agreement, 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 Agreement.

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 Agreement. 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 Agreement. They may also consult together for the elimination of double taxation in cases not provided for in the Agreement.

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 Agreement, and
- (b) the competent authorities are unable to reach an agreement to resolve that case pursuant to paragraph 2 within two years from the presentation of the case to the competent authority of the other Contracting State,

any unresolved issues arising from the case shall be submitted to arbitration if the person so requests. These unresolved issues shall not, however, be submitted to arbitration if a binding decision on these issues has already been rendered by a court or administrative tribunal of either Contracting State, or if the competent authorities of both Contracting States have agreed that these issues are not suitable for resolution through arbitration and have notified the presenter of the case of such agreement within two years from the presentation of the case to the competent authority of the other 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.

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 Agreement or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, of any federal state (*Land*) thereof, or of any political subdivision or local authority thereof, insofar as the taxation thereunder is not contrary to the Agreement. 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 other Contracting State supplying the information provides prior authorisation of 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*).

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.

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 Agreement 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 income tax;
 - (ii) the corporation tax;
 - (iii) the special income tax for reconstruction;
 - (iv) the special corporation tax for reconstruction;
 - (v) the local corporation tax;
 - (vi) the consumption tax;
 - (vii) the local consumption tax;
 - (viii) the inheritance tax; and

- (ix) the gift tax;
- (b) in the case of the Federal Republic of Germany:
 - (i) the income tax (*Einkommensteuer*);
 - (ii) the corporate income tax (*Körperschaftsteuer*);
 - (iii) the solidarity surcharge (*Solidaritätszuschlag*);
 - (iv) the value added tax (*Umsatzsteuer*);
 - (v) the insurance tax (*Versicherungsteuer*);
 - (vi) the net wealth tax (*Vermögensteuer*);
 - (vii) the inheritance tax (*Erbschaftsteuer*);
 - (viii) the gift tax (*Schenkungssteuer*);
 - (ix) the trade tax (*Gewerbesteuer*); and
 - (x) the real estate acquisition tax (*Gründerwerbsteuer*);
- (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 this Agreement 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. Notwithstanding the provisions of paragraph 5, 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 according to the laws of that other Contracting State, shall have such effect under the laws of that other Contracting State. The first-mentioned Contracting State shall inform the other Contracting State about 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 other Contracting State, 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.

10. Before assistance is lent under the provisions of this Article, the competent authorities of both Contracting States shall agree upon the mode of application of this Article, including an agreement to ensure comparable levels of assistance to each of the Contracting States. In particular, the competent authorities of both Contracting States shall agree on a limit to the number of requests for assistance that a Contracting State may make in a particular year and a minimum monetary threshold for a revenue claim for which assistance is sought.

Article 27
Procedural Rules for Taxation at Source

1. If in a Contracting State the taxes on dividends, interest, royalties or other items of income derived by a person who is a resident of the other Contracting State are levied by withholding at source, the right of the first-mentioned Contracting State to apply the withholding of tax at the rate provided under its domestic law shall not be affected by the provisions of this Agreement. The tax withheld at source shall be refunded on application by the taxpayer if and to the extent that it is reduced or ceases to be levied in accordance with the Agreement.

2. Applications for refund of the withholding taxes of a Contracting State which are subject to reduction or exemption under this Agreement shall be submitted within the period provided for in the domestic law of that Contracting State.

3. Each Contracting State may provide for procedures to the effect that payments of income subject under this Agreement to no tax or only to reduced tax in the Contracting State in which the income arises may be made without deduction of tax or with deduction of tax only at the rate provided in the relevant Article of the Agreement.

4. The Contracting State in which the items of income arise may require the taxpayer to provide certification of his residence in the other Contracting State issued by the competent authority of that other Contracting State.

5. The competent authorities of the Contracting States may determine the mode of implementation of this Article by mutual agreement in accordance with the domestic law of each Contracting State.

Article 28
Members of Diplomatic Missions and Consular Posts

Nothing in this Agreement 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 29
Headings

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

Article 30
Protocol

The Protocol attached to this Agreement shall form an integral part thereof.

Article 31
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 Agreement have been completed. The Agreement shall enter into force on the thirtieth day after the date of receipt of the latter notification.

2. This Agreement shall be applicable:

(a) in the case of Japan:

(i) in the case of taxes levied on the basis of a taxable year, for taxes for any taxable years beginning on or after the first day of January in the calendar year next following that in which the Agreement enters into force; and

(ii) in the case of taxes not levied on the basis of a taxable year, for taxes levied on or after the first day of January in the calendar year next following that in which the Agreement enters into force; and

(b) in the case of the Federal Republic of Germany:

(i) in the case of taxes withheld at source, in respect of amounts paid on or after the first day of January in the calendar year next following that in which the Agreement enters into force; and

(ii) in the case of other taxes, in respect of taxes levied for periods beginning on or after the first day of January in the calendar year next following that in which the Agreement enters into force.

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

4. The Agreement between Japan and the Federal Republic of Germany for the Avoidance of Double Taxation with respect to Taxes on Income and to certain other Taxes signed at Bonn on 22 April 1966, as modified and supplemented by the Protocol signed at Tokyo on 17 April 1979 and the Second Protocol signed at Bonn on 17 February 1983 (hereinafter referred to as "the prior Agreement"), shall cease to be effective from the date upon which this Agreement shall be applicable in respect of the taxes to which the Agreement applies in accordance with the provisions of paragraph 2.

5. In respect of the capital tax to which the prior Agreement applies, the prior Agreement shall cease to be effective from the date upon which this Agreement enters into force.

6. The prior Agreement shall terminate on the entry into force of this Agreement.

7. Notwithstanding the provisions of paragraph 6, the provisions of the prior Agreement shall continue to apply to tax cases having occurred prior to the date upon which this Agreement has become applicable in accordance with the provisions of this Article.

8. Notwithstanding the entry into force of this Agreement, an individual who is entitled to the benefits of Article 20 of the prior Agreement at the time of the entry into force of the Agreement 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 Agreement had not entered into force.

Article 32 Termination

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

- (a) in the case of Japan:
 - (i) in the case of taxes levied on the basis of a taxable year, for taxes for any taxable years beginning on or after the first day of January in the calendar year next following that in which the notice of termination is given; and
 - (ii) in the case of taxes not levied on the basis of a taxable year, for taxes levied on or after the first day of January in the calendar year next following that in which the notice of termination is given; and
- (b) in the case of the Federal Republic of Germany:
 - (i) in the case of taxes withheld at source, in respect of amounts paid on or after the first day of January in the calendar year next following that in which the notice of termination is given; and
 - (ii) in the case of other taxes, in respect of taxes levied for periods beginning on or after the first day of January in the calendar year next following that in which the notice of termination is given.

The notice of termination shall be regarded as having been given by a Contracting State on the date of receipt of such notice by the other Contracting State.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto, have signed this Agreement.

DONE at Tokyo on this seventeenth day of December 2015 in two originals, each in the Japanese, German and English languages, all three texts being authentic. In the case there is any divergence of interpretation between the Japanese and the German texts, the English text shall prevail.

For Japan:

Yoji Muto

For the Federal Republic
of Germany:

Hans Carl Freiherr
von Werthern

Protocol

At the signing of the Agreement between Japan and the Federal Republic of Germany for the Elimination of Double Taxation with respect to Taxes on Income and to certain other Taxes and the Prevention of Tax Evasion and Avoidance (hereinafter referred to as "the Agreement") at Tokyo on 17 December 2015, Japan and the Federal Republic of Germany have agreed upon the following provisions, which shall form an integral part of the Agreement.

1. With reference to Article 2 of the Agreement:

The provisions of the Agreement in respect of taxation of income shall mutatis mutandis apply to the enterprise tax of Japan and the trade tax (*Gewerbesteuer*) of the Federal Republic of Germany and any identical or substantially similar taxes that are imposed after the date of signature of the Agreement in addition to, or in place of those taxes to the extent that they are computed on a basis, or by taking into account any elements, other than income.

2. With reference to paragraph 1 of Article 4 of the Agreement:

It is understood that a person is "liable to tax" in a Contracting State even where all or part of its income is exempted from tax in that Contracting State by satisfying the requirements for exemption specified in the tax laws of that Contracting State.

3. With reference to Articles 6 to 20 of the Agreement:

Where, pursuant to any provision of the Agreement, a Contracting State reduces the rate of tax on, or exempts from tax, income of a resident of the other Contracting State and under the laws in force in that other Contracting State the resident is subjected to tax by that other Contracting State only on that part of such income which is remitted to or received in that other Contracting State, then the reduction or exemption shall apply only to so much of such income as is remitted to or received in that other Contracting State.

4. Notwithstanding any provisions of the Agreement:

- (a) in the case of Japan, the following income or gains arising in Japan may be taxed in Japan according to the laws of Japan:
 - (i) dividends paid by a company which is entitled to a deduction for dividends paid to its beneficiaries in computing its taxable income for Japanese tax;
 - (ii) interest 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; or
 - (iii) income or gains derived by a silent partner in respect of a silent partnership (*Tokumei Kumiai*) contract or other similar contract, or
- (b) in the case of the Federal Republic of Germany, any income arising in the Federal Republic of Germany may be taxed in the Federal Republic of Germany according to the laws of the Federal Republic of Germany, if it:
 - (i) is derived from rights or debt claims carrying a right to participate in profits, including income derived by a silent partner (*stiller Gesellschafter*) from his participation as such, or from a loan with an interest rate linked to borrower's profit (*partiarisches Darlehen*) or from profit sharing bonds (*Gewinnobligationen*) within the meaning of the tax law of the Federal Republic of Germany; and
 - (ii) is deductible in the determination of profits of the debtor of such income.

5. With reference to Article 10 of the Agreement:

- (a) It is understood that distributions on certificates of a German investment fund are treated as dividends.

- (b) Notwithstanding the provisions of that Article, subparagraph (a) of paragraph 2 and paragraph 3 of that Article shall not apply to dividends paid by a German real estate investment trust company with listed share capital (*Real Estate Investment Trust Aktiengesellschaft*) and by a German investment fund.
- (c) For purposes of subparagraphs (a) and (b), the term "German investment fund" means a vehicle (not established as a partnership) within the meaning of the Investment Act of the Federal Republic of Germany (*Kapitalanlagegesetzbuch*) that is widely held and that holds a diversified portfolio of securities or invests directly or indirectly in real property for the main purpose of deriving rent.

6. With reference to paragraph 5 of Article 21 of the Agreement:

It is understood that subparagraph (c) of that paragraph applies only to persons who are residents of, and business conducted in, the same Contracting State.

7. With reference to paragraph 9 of Article 21 of the Agreement:

It is understood that the provisions of the law of a Contracting State which are designed to prevent the avoidance or evasion of taxes include:

- (a) in the case of Japan, Section 4-2 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) of Japan;
- (b) in the case of the Federal Republic of Germany, Parts 4, 5 and 7 of the German External Tax Relations Act (*Außensteuergesetz*), Section 42 of the German Fiscal Code (*Abgabenordnung*) and paragraph 3 of Section 50d of the German Income Tax Act (*Einkommensteuergesetz*).

8. With reference to Article 22 of the Agreement:

It is understood that the provisions of that Article shall not be construed as obligating Japan to allow any amount of German tax to be credited against the enterprise tax of Japan nor obligating the Federal Republic of Germany to allow any amount of Japanese tax to be credited against the trade tax of the Federal Republic of Germany.

9. With reference to Article 23 of the Agreement:

It is understood that the provisions of that Article shall not be construed as obligating a Contracting State to permit cross-border consolidation of income or similar benefits between an enterprise of that Contracting State and an enterprise of the other Contracting State.

10. With reference to paragraph 5 of Article 24 of the Agreement:

- (a) The competent authorities shall by mutual agreement establish a standard procedure in order to seek to ensure that an arbitration decision will be implemented within two years from a request for arbitration as referred to in paragraph 5 of Article 24 of the Agreement and shall use their best endeavours to follow the procedure.
- (b) An arbitration panel shall be established in accordance with the following rules:
 - (i) An arbitration panel shall consist of three arbitrators with expertise or experience in international tax matters.
 - (ii) Each competent authority shall appoint one arbitrator. The two arbitrators appointed by the competent authorities shall appoint the third arbitrator who serves as the chair of the arbitration panel in accordance with the procedures agreed by the competent authorities.

- (iii) All arbitrators shall not be employees of the tax authorities of the Contracting States, nor have dealt with the case presented pursuant to paragraph 1 of Article 24 of the Agreement in any capacity. The third arbitrator shall not be a national of either Contracting State, nor have had his usual place of residence in either Contracting State, nor have been employed by either Contracting State.
 - (iv) The competent authorities shall ensure that all arbitrators and their staff agree, in statements sent to each competent authority, prior to their acting in an arbitration proceeding, to abide by and be subject to the same confidentiality and non-disclosure obligations as those described in paragraph 2 of Article 25 of the Agreement and under the applicable domestic laws of the Contracting States.
 - (v) Each competent authority shall bear the costs of its appointed arbitrator and its own expenses. The costs of the chair of an arbitration panel and other expenses associated with the conduct of the proceedings shall be borne by the competent authorities in equal shares.
- (c) The competent authorities shall provide the information necessary for the arbitration decision to all arbitrators and their staff without undue delay.
 - (d) An arbitration decision shall be treated as follows:
 - (i) An arbitration decision has no formal precedential value.

- (ii) An arbitration decision shall be final, unless that decision is found to be unenforceable by the courts of one of the Contracting States due to a violation of paragraph 5 of Article 24 of the Agreement, of this paragraph or of any procedural rule determined in accordance with subparagraph (a) that may reasonably have affected the decision. If the decision is found to be unenforceable due to the violation, the request for arbitration 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 clauses (iv) and (v) of subparagraph (b)).
- (e) If at any time before the arbitration panel delivers a determination to the competent authorities of the Contracting States:
 - (i) the competent authorities of the Contracting States reach a mutual agreement to resolve the case pursuant to paragraph 2 of Article 24 of the Agreement;
 - (ii) the presenter of the case withdraws the request for arbitration; or
 - (iii) a binding decision concerning the case is rendered by a court or administrative tribunal of one of the Contracting States during the arbitration proceedings;the mutual agreement procedure, including the arbitration proceedings, with respect to the case shall terminate.
- (f) In the event a case is pending in litigation or appeal, the mutual agreement that implements the arbitration decision shall be considered not to be accepted by the presenter of the case if any person directly affected by the case who is a party to the litigation or appeal does not withdraw within 60 days after receiving the determination of the arbitration panel from consideration by the relevant court or administrative tribunal all issues resolved in the arbitration proceeding. In this case, the case will not be eligible for any further consideration by the competent authorities.

- (g) The provisions of paragraph 5 of Article 24 of the Agreement and this paragraph shall not apply to cases falling within paragraph 3 of Article 4 of the Agreement.
- (h) The provisions of paragraph 5 of Article 24 of the Agreement and this paragraph shall apply mutatis mutandis to a case presented pursuant to paragraph 1 of Article 25 of the Agreement between Japan and the Federal Republic of Germany for the Avoidance of Double Taxation with respect to Taxes on Income and to certain other Taxes, signed at Bonn on 22 April 1966, as modified and supplemented by the Protocol signed at Tokyo on 17 April 1979 and the Second Protocol signed at Bonn on 17 February 1983 only when the competent authorities of the Contracting States have agreed that the case is suitable for resolution through arbitration. No unresolved issues of such case, however, shall be submitted to arbitration earlier than the day on which two years have elapsed from the entry into force of the Agreement.

11. With reference to Article 25 of the Agreement:

Insofar as personal information is exchanged under that Article, the following provisions shall apply:

- (a) The competent authority of a Contracting State which receives information (hereinafter referred to as "the receiving authority") may use such information in compliance with paragraph 2 of Article 25 of the Agreement only for the purpose stated by the competent authority of the other Contracting State which supplies information (hereinafter referred to as "the supplying authority") and shall be subject to the conditions prescribed by the supplying authority to ensure compliance with that paragraph.
- (b) The supplying authority shall endeavour to ensure that the information to be supplied is accurate and foreseeably relevant within the meaning of the first sentence of paragraph 1 of Article 25 of the Agreement and that it is necessary for and commensurate with the purpose for which it is supplied.

Information is foreseeably relevant if in the concrete case at hand there is the serious possibility that the Contracting State of which the receiving authority is the competent authority has a right to tax and there is nothing to indicate that the information is already known to the receiving authority or that the receiving authority would learn of the taxable object without that information.

If the supplying authority discovers that it has supplied inaccurate information or information which should not have been supplied, it shall inform the receiving authority of this without delay.

The receiving authority shall correct or erase such information without delay.

- (c) In any case, the receiving authority shall erase the information supplied that is not or no longer required for the purpose for which it was supplied.
- (d) The receiving authority shall inform the supplying authority (in the case of information provided on request or spontaneously, on a case-by-case basis) about whether the information supplied has been used if the supplying authority so requests.
- (e) The receiving authority shall inform, in accordance with its domestic law, a person of the supplied information in respect of him and of the purpose for which the information is to be used.
- (f) The Contracting States shall bear liability in accordance with their domestic laws in relation to any person suffering unlawful damage in connection with the exchange of information.
- (g) The competent authorities of the Contracting States shall keep records of the exchange of information.
- (h) The supplying authority may inform the receiving authority of the provisions for the deletion of the personal information under the domestic law of the Contracting State of which the supplying authority is the competent authority.

- (i) The competent authorities of the Contracting States shall take necessary measures to protect information supplied against unauthorised access, alteration or disclosure.

12. With reference to paragraph 2 of Article 25 of the Agreement:

In the event that information received by a Contracting State is needed to be used by that Contracting State as evidence or otherwise in non-tax criminal proceedings carried out by a court or a judge, that Contracting State shall, in order to use such information as evidence or otherwise in non-tax criminal proceedings carried out by a court or a judge, submit a request in accordance with the Agreement between Japan and the European Union on Mutual Legal Assistance in Criminal Matters signed at Brussels on 30 November 2009 and at Tokyo on 15 December 2009.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto, have signed this Protocol.

DONE at Tokyo on this seventeenth day of December 2015 in two originals, each in the Japanese, German and English languages, all three texts being authentic. In the case there is any divergence of interpretation between the Japanese and the German texts, the English text shall prevail.

For Japan:

Yoji Muto

For the Federal Republic
of Germany:

Hans Carl Freiherr
von Werthern