

(Japanese Note)

Luxembourg, January 25, 2010

Excellency:

I have the honour to refer to the Convention between Japan and the Grand-Duchy of Luxembourg for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and/or to a certain other tax, signed at Luxembourg on 5 March 1992, as amended by the Protocol signed today (hereinafter referred to as "the Convention") and to propose on behalf of the Government of Japan the following understandings:

1. With reference to Article 28 of the Convention:
  - (a) In no case shall the provisions of that Article be construed so as to impose on a Contracting State the obligation to supply, without any specific request from the competent authority of the other Contracting State, information on an automatic or a spontaneous basis.
  - (b) When a Contracting State is making a request for information in accordance with the provisions of the Convention, the competent authority of that Contracting State shall provide the following information to the competent authority of the other Contracting State to demonstrate the foreseeable relevance of the information to the request:
    - (i) the identity of the person under examination;
    - (ii) a statement of the information sought including its nature and the form in which the first-mentioned Contracting State wishes to receive the information from the other Contracting State;
    - (iii) the tax purposes for which the requested information is sought;
    - (iv) grounds for believing that the requested information is held by the other Contracting State or is in the possession or control of a person within the other Contracting State;

- (v) to the extent known, the name and address of any person believed to be in possession or control of the requested information;
- (vi) a statement that the first-mentioned Contracting State has pursued all means available within the first-mentioned Contracting State to obtain the requested information, except those that would give rise to disproportionate difficulties.

2. With reference to paragraph 5 of Article 28 of the Convention, a Contracting State may decline to supply information relating to confidential communications between attorneys, solicitors or other admitted legal representatives in their role as such and their clients to the extent that the communications are protected from disclosure under the domestic laws of that Contracting State.

If the foregoing understanding meet with the approval of the Government of the Grand-Duchy of Luxembourg, I have further the honour to suggest that the present Note and Your Excellency's Note in reply to that effect shall constitute an agreement between the two Governments in this matter, which shall enter into force at the same time as the entry into force of the Protocol signed today.

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

Takashi Suetsuna  
Ambassador Extraordinary  
and Plenipotentiary of Japan  
to the Grand-Duchy of Luxembourg

His Excellency  
Mr. Luc Frieden  
Minister of Finance  
of the Grand-Duchy of Luxembourg

(Luxembourg Note)

Luxembourg, January 25, 2010

Excellency:

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

"(Japanese Note)"

I have further the honour to confirm on behalf of the Government of the Grand-Duchy of Luxembourg that the foregoing understanding is acceptable and to agree that Your Excellency's Note and this Note in reply shall constitute an agreement between the two Governments which shall enter into force at the same time as the entry into force of the Protocol signed today.

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

Luc Frieden  
Minister of Finance  
of the Grand-Duchy of Luxembourg

His Excellency  
Mr. Takashi Suetsuna  
Ambassador Extraordinary  
and Plenipotentiary of Japan  
to the Grand-Duchy of Luxembourg