

**SYNTHESISED TEXT
OF THE MLI AND THE CONVENTION BETWEEN
THE GOVERNMENT OF JAPAN AND THE GOVERNMENT OF
THE UNION OF SOVIET SOCIALIST REPUBLICS
FOR THE AVOIDANCE OF DOUBLE TAXATION
WITH RESPECT TO TAXES ON INCOME
(AS IT APPLIES TO RELATIONS BETWEEN
JAPAN AND UKRAINE)**

This document presents the synthesised text for the application, in respect of relations between Japan and Ukraine, of the Convention between the Government of Japan and the Government of the Union of Soviet Socialist Republics for the Avoidance of Double Taxation with respect to Taxes on Income signed on January 18, 1986 (hereinafter referred to as “the Convention”), as modified by the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting signed by Japan on June 7, 2017 and by Ukraine on July 23, 2018 (hereinafter referred to as “the MLI”).

This document was prepared on the basis of the reservations and notifications submitted to the Depository (the Secretary-General of the Organisation for Economic Co-operation and Development) by Japan on September 26, 2018 and by Ukraine on August 8, 2019 respectively.

The sole purpose of this document is to facilitate the understanding of the application of the MLI to the Convention and the document does not constitute a source of law. The authentic texts of the Convention and the MLI are the only legal texts applicable.

The provisions of the MLI that are applicable with respect to the provisions of the Convention are included in boxes throughout this document in the context of the relevant provisions of the Convention.

In this document, changes to the text of the provisions of the MLI have been made to conform the terminology used in the MLI to the terminology used in the Convention (such as changes from “Covered Tax Agreement” to “Convention” and changes from “Contracting Jurisdiction” to “Contracting State”). Similarly, changes have been made to parts of provisions of the MLI that describe existing provisions of the Convention by replacing such descriptive language with the article and paragraph numbers or language of the existing provisions. These changes are intended to increase the readability of the document and are not intended to change the substance of the provisions of the MLI.

Unless the context otherwise requires, references made to the provisions of the Convention will be understood as referring to the provisions of the Convention as modified by the provisions of the MLI.

Entry into force and entry into effect of the MLI

The MLI enters into force for Japan on January 1, 2019 and for Ukraine on December 1, 2019 and has effect as follows:

- (a) The provisions of the MLI shall have effect in each Contracting State with respect to the Convention:
 - (i) with respect to taxes withheld at source on amounts paid or credited to non-residents, where the event giving rise to such taxes occurs on or after January 1, 2020; and
 - (ii) with respect to all other taxes levied by that Contracting State, for taxes levied with respect to taxable periods beginning on or after June 1, 2020.
- (b) Notwithstanding (a), Article 16 (Mutual Agreement Procedure) of the MLI shall have effect with respect to the Convention for a case presented to the competent authority of a Contracting State on or after December 1, 2019, except for cases that were not eligible to be presented as of that date under the Convention prior to its modification by the MLI, without regard to the taxable period to which the case relates.

CONVENTION
BETWEEN THE GOVERNMENT OF JAPAN AND
THE GOVERNMENT OF THE UNION OF
SOVIET SOCIALIST REPUBLICS
FOR THE AVOIDANCE OF DOUBLE TAXATION
WITH RESPECT TO TAXES ON INCOME

The Government of Japan and the Government of the
Union of Soviet Socialist Republics,

The following preamble text described in paragraph 3 of Article 6 of the MLI is included in the preamble of the Convention:

Article 6 – Purpose of a Covered Tax Agreement

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

~~Desiring to conclude a Convention for the avoidance of double taxation with respect to taxes on income,~~

The following preamble text described in paragraph 1 of Article 6 of the MLI replaces the preamble language of the Convention referring to “Desiring to conclude a Convention for the avoidance of double taxation with respect to taxes on income,”:

Article 6 – Purpose of a Covered Tax Agreement

Intending to eliminate double taxation with respect to the taxes covered by the Convention 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 the Convention for the indirect benefit of residents of third jurisdictions),

Have agreed as follows:

Article 1

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, the term “resident of a Contracting State” means any person who is

liable to tax in that Contracting State by reason of his domicile, residence, place of head or main office, place of management or any other criterion of a similar nature.

3. Where by reason of the provisions of paragraph 2 a person is a resident of both Contracting States, then the competent authorities of the Contracting States shall determine by mutual agreement the Contracting State of which that person shall be deemed to be a resident for the purposes of this Convention.

Article 2

1. This Convention shall apply to the following taxes:

(a) in Japan:

(i) the income tax;

(ii) the corporation tax; and

(iii) the local inhabitant taxes;

(b) in the Union of Soviet Socialist Republics (hereinafter referred to as "the USSR"):

(i) the individual income tax; and

(ii) the income tax on foreign legal persons.

2. This Convention shall also apply to any identical or substantially similar taxes which are imposed after the date of signature of this Convention in addition to, or in place of, those referred to in paragraph 1.

Article 3

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

(a) the terms "a Contracting State" and "the other Contracting State" mean Japan or the USSR, as the context requires;

(b) the term "international traffic" means any transport by a ship or aircraft operated by a resident of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;

(c) the term "person" includes an individual, a legal person or any entity treated as a legal person for tax purposes (hereinafter referred to as "a

- legal person"), and any other body of persons;
- (d) the term "competent authority" means:
- (i) in the case of Japan, the Minister of Finance or his authorized representative; and
 - (ii) in the case of the USSR, the Ministry of Finance of the USSR or its authorized representative.

Article 4

1. For the purposes of this Convention, the term "permanent establishment" means any fixed place of business through which the business of a resident of a Contracting State is wholly or partly carried on.

2. A building site or construction or installation project constitutes a permanent establishment only if it lasts more than 12 months.

~~3. Notwithstanding the provisions of paragraphs 1 and 2, 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 resident mentioned in paragraph 1;~~

~~(b) the maintenance of a stock of goods or merchandise belonging to the resident mentioned in paragraph 1 solely for the purpose of storage, display or delivery;~~

~~(c) the maintenance of a stock of goods or merchandise belonging to the resident mentioned in paragraph 1 solely for the purpose of processing by another person;~~

~~(d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or of collecting information, for the resident mentioned in paragraph 1;~~

~~(e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the resident mentioned in paragraph 1, any other activity of a preparatory or auxiliary character;~~
~~or~~

~~(f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub paragraphs (a) to (c), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.~~

The following paragraph 2 of Article 13 of the MLI replaces paragraph 3 of Article 4 of the Convention:

Article 13 – Artificial Avoidance of Permanent Establishment Status through the Specific Activity Exemptions

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

- a)
 - i) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the resident mentioned in paragraph 1;
 - ii) the maintenance of a stock of goods or merchandise belonging to the resident mentioned in paragraph 1 solely for the purpose of storage, display or delivery;
 - iii) the maintenance of a stock of goods or merchandise belonging to the resident mentioned in paragraph 1 solely for the purpose of processing by another person;
 - iv) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or of collecting information, for the resident mentioned in paragraph 1;
- b) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any activity not described in subparagraph a);
- c) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs a) and b),

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

The following paragraph 4 of Article 13 of the MLI applies to the Convention:

Article 13 – Artificial Avoidance of Permanent Establishment Status through the Specific Activity Exemptions

4. Paragraph 3 of Article 4 of the Convention 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 Article 4 of the Convention; 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.

~~4. Notwithstanding the provisions of paragraph 1, where a resident of a Contracting State carries on business through an agent in the other Contracting State, that resident shall be deemed to have a permanent establishment in that other Contracting State in respect of any activities which that agent undertakes for the resident if:~~

- ~~(a) the agent has, and habitually exercises, in that other Contracting State an authority to conclude contracts in the name of the resident; and~~
- ~~(b) the agent is not an agent of an independent status to whom the provisions of paragraph 5 apply; and~~
- ~~(c) the activities of the agent are not limited to those mentioned in paragraph 3.~~

~~5. A resident of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting~~

~~State merely because he carries on business in that other Contracting State through a broker, general commission agent or any other agent of an independent status, provided that such broker or agent is acting in the ordinary course of his business.~~

The following paragraphs 1 and 2 of Article 12 of the MLI replace paragraphs 4 and 5 of Article 4 of the Convention:

Article 12 – Artificial Avoidance of Permanent Establishment Status through Commissionnaire Arrangements and Similar Strategies

1. Notwithstanding the provisions of Article 4 of the Convention, but subject to paragraph 2, 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 these activities, if they were exercised by the enterprise through a fixed place of business of that enterprise situated in that Contracting State, would not cause that fixed place of business to be deemed to constitute a permanent establishment under the definition of permanent establishment included in the provisions of Article 4 of the Convention.

2. Paragraph 1 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.

6. The fact that a legal person who is a resident of a Contracting State controls or is controlled by a legal person who is a resident of the other Contracting State, or who carries on business in that other Contracting State, shall not of itself constitute either legal person a permanent establishment of the other.

The following paragraph 1 of Article 15 of the MLI applies to the Convention:

Article 15 – Definition of a Person Closely Related to an Enterprise

1. For the purposes of the provisions of Article 4 of the Convention, a person 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 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 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.

Article 5

1. Profits derived from business activities by a resident of a Contracting State shall be taxable only in that Contracting State unless the resident carries on business in the other Contracting State through a permanent establishment situated therein. If the resident carries on business as aforesaid, the profits of the resident may be taxed in that other Contracting State but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, where a resident of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate person engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the resident of which it is a permanent establishment.

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the Contracting State in which the permanent establishment is situated or elsewhere.

4. No profits shall be attributed to a permanent establishment by reason of the mere purchase of goods or merchandise by that permanent establishment for the resident.

5. For the purposes of paragraphs 1 to 4, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

6. 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 6

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

2. In respect of the operation of ships or aircraft in international traffic carried on by a resident of a Contracting State, that resident, if a resident of the USSR, shall be exempt from the enterprise tax in Japan, and, if a resident of Japan, shall be exempt from any tax similar to the enterprise tax in Japan which may hereafter be imposed in the USSR.

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 7

1. Dividends paid by a legal person who 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, such dividends may also be taxed in the Contracting State of which the legal person paying the dividends is a resident, and according to the laws of that Contracting State, but if the recipient is the beneficial

owner of the dividends the tax so charged shall not exceed 15 per cent of the gross amount of the dividends.

The provisions of this paragraph shall not affect the taxation of the legal person in respect of the profits out of which the dividends are paid.

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

4. The provisions of paragraphs 1 and 2 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 legal person 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 5 shall apply.

Article 8

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other Contracting State.

2. However, such interest may also be taxed in the Contracting State in which it arises, and according to the laws of that Contracting State, but if the recipient is the beneficial owner of the interest the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State and derived by the Government of the other Contracting State, local authorities thereof, the Central Bank of that other Contracting State or any financial institution wholly owned by that Government, or by any resident of the other Contracting State with respect to debt-claims guaranteed, insured or indirectly financed by the Government of that other Contracting State, local authorities thereof, the Central Bank of that other Contracting State or any financial institution wholly owned by that Government shall be exempt from tax in the first-mentioned Contracting State.

4. For the purposes of paragraph 3, the terms "the Central Bank" and "financial institution wholly owned by

the Government" mean:

- (a) in the case of Japan:
 - (i) the Bank of Japan;
 - (ii) the Export-Import Bank of Japan; and
 - (iii) such other financial institution the capital of which is wholly owned by the Government of Japan as may be agreed upon from time to time between the Governments of the Contracting States;
- (b) in the case of the USSR:
 - (i) the State Bank of the USSR;
 - (ii) the Bank for Foreign Trade of the USSR; and
 - (iii) such other financial institution the capital of which is wholly owned by the Government of the USSR as may be agreed upon from time to time between the Governments of the Contracting States.

5. The term "interest" as used in this Article means income from debt-claims of every kind, and in particular, income from Government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures.

6. The provisions of paragraphs 1 to 3 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 5 shall apply.

7. Interest shall be deemed to arise in a Contracting State when the payer is that Contracting State, local authorities thereof or 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.

8. 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 9

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other Contracting State.

2. (a) Royalties received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films and films or tapes for radio or television broadcasting shall be exempt from tax in the Contracting State in which they arise if the beneficial owner of the royalties is a resident of the other Contracting State.

(b) Royalties received as a consideration for the use of, or the right to use, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience may also be taxed in the Contracting State in which they arise, and according to the laws of that Contracting State. However, the tax so charged shall not exceed 10 per cent of the gross amount of the royalties if the beneficial owner of the royalties is a resident of the other Contracting State.

3. The provisions of paragraphs 1 and 2 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 5 shall apply.

4. Royalties shall be deemed to arise in a Contracting State when the payer is that Contracting State, local

authorities thereof or a resident of that Contracting State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

5. 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 10

1. Income derived by a resident of a Contracting State from immovable property 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. Ships and aircraft shall not in any case 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.

Article 11

1. Gains derived by a resident of a Contracting State from the alienation of immovable property as defined in paragraph 2 of Article 10 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, forming part of the property of a permanent establishment which a resident of a Contracting State has in the other Contracting State, including such gains from the alienation of such a permanent establishment may be taxed in that other Contracting State.

3. Unless the provisions of paragraph 2 are applicable, gains derived by a resident of a Contracting State from the alienation of shares of a legal person being a resident of the other Contracting State may be taxed in that other Contracting State.

4. Gains derived by a resident of a Contracting State from the alienation of ships or aircraft operated in international traffic and 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 derived by a resident of a Contracting State from the alienation of any property other than that referred to in paragraphs 1 to 4, shall be taxable only in that Contracting State.

The following paragraph 4 of Article 9 of the MLI applies to the Convention:

*Article 9 – Capital Gains from Alienation of Shares or Interests of Entities
Deriving their Value Principally from Immovable Property*

4. For purposes of the Convention, gains derived by a resident of a Contracting State from the alienation of shares 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 more than 50 per cent of their value directly or indirectly from immovable property situated in that other Contracting State.

Article 12

1. Except as otherwise provided in the provisions of Articles 13 to 18, wages and other remuneration for an employment or other personal services (including professional services) derived by a resident of a Contracting State may be taxed in the other Contracting State if the activities of the resident are performed in that other Contracting State. However, such remuneration shall be exempt from tax in that other 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 the calendar year concerned; and

- (b) the remuneration is paid by, or on behalf of, a person who is not a resident of that other Contracting State; and
- (c) the remuneration is not borne by a permanent establishment which that person has in that other Contracting State.

2. Notwithstanding the provisions of paragraph 1, remuneration in respect of an employment exercised aboard a ship or aircraft operated in international traffic by a resident of a Contracting State may be taxed in that Contracting State.

Article 13

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 legal person who is a resident of the other Contracting State may be taxed in that other Contracting State.

Article 14

1. Income derived by an individual who is a resident of a Contracting State as an entertainer such as a theatre, motion picture, radio or television artiste and a musician, or as an athlete, from his personal activities as such exercised in the other Contracting State, may be taxed in that other Contracting State.

Such income shall, however, be exempt from tax in that other Contracting State if such activities are exercised by an individual who is a resident of the first-mentioned Contracting State pursuant to a special programme for cultural exchange agreed upon from time to time between the Governments of the Contracting States.

2. Where income in respect of personal activities exercised in a Contracting State by an entertainer or athlete in his capacity as such accrues not to the entertainer or athlete himself but to another person who is a resident of the other Contracting State, that income may, notwithstanding the provisions of Articles 5 and 12, be taxed in the first-mentioned Contracting State.

Such income shall, however, be exempt from tax in the first-mentioned Contracting State if such activities are exercised pursuant to a special programme for cultural exchange agreed upon from time to time between the Governments of the Contracting States.

Article 15

Except as otherwise provided in the provisions of Article 16, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that Contracting State.

Article 16

Remuneration, including pensions, paid by, or out of funds to which contributions are made by, a Contracting State, or subdivisions or local authorities thereof, to a national of that Contracting State in respect of services rendered to that Contracting State, or subdivisions or local authorities thereof, in the discharge of functions of a governmental nature shall be taxable only in that Contracting State.

Article 17

1. An individual who is, or immediately before visiting a Contracting State was, a resident of the other Contracting State and is temporarily present in the first-mentioned Contracting State for the primary purpose of teaching or conducting research at a university, school or other accredited educational institution in the first-mentioned Contracting State shall be exempt from tax in the first-mentioned Contracting State, for a period not exceeding two years from the date of his first arrival in the first-mentioned Contracting State, in respect of remuneration for such teaching or research.

2. The provisions of paragraph 1 shall not apply to income from teaching or research if such teaching or research is undertaken primarily for the private benefit of a specific person or persons.

Article 18

Payments which a student or business apprentice who is, or immediately before visiting a Contracting State was, a resident of the other Contracting State and who is present in the first-mentioned Contracting State for the sole purpose of his education or training receives for the purpose of his maintenance, education or training shall be exempt from tax in the first-mentioned Contracting State, provided that such payments are made to him from outside that first-mentioned Contracting State.

Article 19

1. Items of income of 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 10, if the recipient of such income who is 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 derived is effectively connected with such permanent establishment. In such case, the provisions of Article 5 shall apply.

Article 20

1. Subject to 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 USSR and that income may be taxed in the USSR in accordance with the provisions of this Convention, the amount of Soviet Union 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 that part of the Japanese tax which is appropriate to that income.

2. In the USSR, double taxation shall be avoided in conformity with the laws of the USSR.

Article 21

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 or of any third state in the same circumstances are or may be subjected.

2. The taxation on a resident of a Contracting State in respect of a permanent establishment which that resident has in the other Contracting State shall not be less favourably levied in that other Contracting State than the taxation in respect of a permanent establishment levied on a resident of any third state carrying on the same activities in that other Contracting State.

3. Notwithstanding the provisions of paragraphs 1 and 2, either Contracting State may accord special tax advantages to nationals or residents of any third state on the basis of reciprocity or by virtue of a special agreement with that third state.

4. The provisions of this Article shall, notwithstanding

the provisions of Article 2, apply to taxes of every kind and description.

Article 22

~~1. Where a resident of a Contracting State 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 laws 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 21, to that of the Contracting State of which he is a national.~~

The following first sentence of paragraph 1 of Article 16 of the MLI replaces the first sentence of paragraph 1 of Article 22 of the Convention:

Article 16 – Mutual Agreement Procedure

Where a person considers that the actions of one or both of the Contracting States result or will result for that person in taxation not in accordance with the provisions of the Convention, that person may, irrespective of the remedies provided by the domestic law of those Contracting States, present the case to the competent authority of either Contracting State.

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 this 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 laws 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 this Convention.

Article 23

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by this Convention insofar as the taxation thereunder is not contrary to the provisions of this Convention. Any information so exchanged shall be treated as confidential and shall not be disclosed to any persons or authorities other than those concerned with the assessment and collection of the taxes covered by this Convention or the determination of appeals in relation thereto.

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

- (a) to carry out administrative measures at variance with the laws or the 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; or
- (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 the interests of the State.

3. The competent authorities of the Contracting States shall notify each other of any substantial changes which have been made in their respective taxation laws within a reasonable period of time after such changes.

Article 24

Nothing in this Convention shall be construed as restricting in any manner any tax exemption, reduction or other allowance which are or may hereafter be accorded in a Contracting State to the nationals or residents of the other Contracting State by the laws of the first-mentioned Contracting State or any agreement between the Contracting States.

The following paragraphs 1 through 3 of Article 10 of the MLI apply to the Convention:

Article 10 – Anti-abuse Rule for Permanent Establishments Situated in Third Jurisdictions

1. Where:

- a) 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
- b) the profits attributable to that permanent establishment are exempt from tax in the first-mentioned Contracting State,

the benefits of the 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.

2. Paragraph 1 shall not apply if the income derived from the other Contracting State described in paragraph 1 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).

3. If benefits under the Convention are denied pursuant to paragraph 1 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 paragraphs 1 and 2. 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.

The following paragraph 1 of Article 7 of the MLI applies to the Convention:

Article 7 – Prevention of Treaty Abuse

1. Notwithstanding any provisions of the 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.

Article 25

1. This Convention shall be ratified and the exchange of the instruments of ratification shall take place at Moscow as soon as possible.

2. This Convention shall enter into force on the thirtieth day after the date of the exchange of instruments of ratification and shall have effect in respect of income for any taxable year beginning on or after the first day of January of the calendar year next following that in which this Convention enters into force.

Article 26

This Convention shall continue in effect indefinitely but either of the Contracting States may, on or before the thirtieth day of June in any calendar year beginning after the expiration of a period of five years from the date of its entry into force, give to the other Contracting State, through the diplomatic channels, written notice of termination.

In such event this Convention shall cease to have effect in respect of income for any taxable year beginning on or after the first day of January of the calendar year next following that in which the notice of termination is given.

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

DONE at Tokyo on the day of January 18, 1986, in

duplicate in the Japanese, Russian and English languages, all three texts being equally authentic. In case of any divergence of interpretations, the interpretation shall be made in accordance with the English text.

For the Government
of Japan:

安 倍 晋太郎

For the Government of the Union
of Soviet Socialist Republics:

Э. ШЕВАРДНАДЗЕ

PROTOCOL

At the signing of the Convention between the Government of Japan and the Government of the Union of Soviet Socialist Republics for the Avoidance of Double Taxation with respect to Taxes on Income (hereinafter referred to as "the Convention"), the undersigned have agreed upon the following provisions which form an integral part of the Convention:

1. With reference to paragraph 3 of Article 1 of the Convention, where an individual is a resident of both Contracting States the question shall be settled by mutual agreement taking into consideration the following rules:

- (a) He shall be deemed to be a resident 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 of the Contracting State with which his personal and economic relations are closest (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 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 of the Contracting State of which he is a national.

2. With reference to Articles 4 and 5 of the Convention, profits derived by a resident of a Contracting State from the sale of goods or merchandise to a resident of the other Contracting State through a representative office situated in that other Contracting State shall not be attributed to the said representative office as long as the activities involved in such sale of the said representative office fall within those activities mentioned in paragraph 3 of Article 4 of the Convention.

3. With reference to paragraph 2 of Article 10 of the Convention, the term "immovable property" shall include in the case of Japan 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.

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

DONE at Tokyo on the day of January 18, 1986, in duplicate in the Japanese, Russian and English languages, all three texts being equally authentic. In case of any divergence of interpretations, the interpretation shall be made in accordance with the English text.

For the Government
of Japan:

For the Government of the Union
of Soviet Socialist Republics:

安 倍 晋太郎

Э. ШЕВАРДНАДЗЕ