

Note: This document is a consolidated text of the provisions of the Original Convention and the provisions of the Amending Protocols. The sole purpose of this document is to facilitate the understanding of the application of the Amending Protocols to the Original Convention and the document does not constitute a source of law. The authentic texts of the Original Convention and the Amending Protocols are the only legal texts applicable. The application of consolidated parts of the texts of the Original Convention and its Amending Protocols contained in this document is subject to the provisions regarding entry into effect provided for in the Amending Protocols.

CONVENTION BETWEEN
JAPAN AND SWITZERLAND
FOR THE AVOIDANCE OF DOUBLE TAXATION
WITH RESPECT TO TAXES ON INCOME

The Government of Japan and the Swiss Federal Council,

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

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

Have agreed as follows:

Article 1

This Convention shall apply to persons who are residents of one or both of the Contracting States.

Article 2

1. The taxes to which this Convention shall apply are:

(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; and
- (v) the local inhabitant taxes

(hereinafter referred to as "Japanese tax");

(b) in the case of Switzerland:

the federal, cantonal and communal taxes on income (total income, earned income, income from capital, industrial and commercial profits, capital gains, and other items of income) (hereinafter referred to as "Swiss tax").

2. This Convention shall also apply to any other taxes of a character substantially similar to those referred to in paragraph 1 and introduced by either Contracting State or by a political subdivision or a local authority thereof after the date of signature of this Convention. The competent authorities of the Contracting States shall notify to each other any changes which have been made in their respective taxation laws within a reasonable period of time after such changes.

3. This Convention shall not apply to Federal anticipatory tax withheld at the source on prizes in a lottery.

4. With respect to paragraph 2 of Article 8 only, this Convention shall also apply to the tax referred to in that paragraph.

Article 3

1. In this Convention, unless the context otherwise requires:

- (a) the term "Japan", when used in a geographical sense, means all the territory of Japan, including its territorial sea, in which the laws relating to Japanese tax are in force, and all the area beyond its territorial sea, including the seabed and subsoil thereof, over which Japan has sovereign rights in accordance with international law and in which the laws relating to Japanese tax are in force;
- (b) the term "Switzerland" means the Swiss Confederation;
- (c) the terms "a Contracting State" and "the other Contracting State" mean Japan or Switzerland, as the context requires;
- (d) the term "tax" means Japanese tax or Swiss tax, as the context requires;

- (e) the term "person" comprises an individual, a company and any other body of persons;
- (f) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;
- (g) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
- (h) the term "international traffic" means any transport by a ship or aircraft except when the ship or aircraft is operated solely between places in a Contracting State and the enterprise that operates the ship or aircraft is not an enterprise of that Contracting State;
- (i) the term "national" means:
 - (i) in the case of Japan, any individual possessing the nationality of Japan, any juridical person created or organised under the laws of Japan and any organisation without juridical personality treated for the purposes of Japanese tax as a juridical person created or organised under the laws of Japan; and
 - (ii) in the case of Switzerland, all Swiss citizens and all legal persons, partnerships and associations deriving their status as such from the laws in force in Switzerland;
- (j) 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 Switzerland, the Head of the Federal Department of Finance or his authorised representative; and
- (k) the term "pension fund or pension scheme" means any person that:
 - (i) is established under the laws of a Contracting State;

- (ii) is operated principally to administer or provide pensions, retirement benefits or other similar remuneration or to earn income for the benefit of other pension funds or pension schemes; and
- (iii) is exempt from tax in that Contracting State with respect to income derived from the activities described in clause (ii).

2. As regards the application of this Convention by a Contracting State any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that Contracting State relating to the taxes which are the subject of this Convention.

Article 4

1. For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the laws of that Contracting State, is liable to tax therein by reason of his domicile, residence, place of head or main office, place of management or any other criterion of a similar nature, and also includes:

- (a) that Contracting State and any political subdivision or local authority thereof;
- (b) a pension fund or pension scheme established under the laws of that Contracting State; and
- (c) an organisation established under the laws of that Contracting State and operated exclusively for a religious, charitable, educational, scientific, artistic, sportive, cultural or public purpose (or for more than one of those purposes), only if all or part of its income may be exempt from tax under the laws of that Contracting State.

This term, however, does not include any person who is liable to tax in that Contracting State in respect only of income from sources in that Contracting State.

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

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

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the Contracting State in which its head or main office is situated.

4. Where, pursuant to any provisions of this Convention, 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.

5. For the purposes of applying this Convention:

- (a) an item of income:
 - (i) derived from a Contracting State through an entity that is organised in the other Contracting State, and

- (ii) treated as the income of the beneficiaries, members or participants of that entity under the tax laws of that other Contracting State,

shall be eligible for the benefits of the Convention that would be granted if it were directly derived by a beneficiary, member or participant of that entity who is a resident of that other Contracting State, to the extent that such beneficiaries, members or participants are residents of that other Contracting State and satisfy any other conditions specified in the Convention, without regard to whether the income is treated as the income of such beneficiaries, members or participants under the tax laws of the first-mentioned Contracting State;

- (b) an item of income:

- (i) derived from a Contracting State through an entity that is organised in the other Contracting State, and

- (ii) treated as the income of that entity under the tax laws of that other Contracting State,

shall be eligible for the benefits of the Convention that would be granted to a resident of that other Contracting State, without regard to whether the income is treated as the income of that entity under the tax laws of the first-mentioned Contracting State, if such entity is a resident of that other Contracting State and satisfies any other conditions specified in the Convention;

- (c) an item of income:

- (i) derived from a Contracting State through an entity that is organised in that Contracting State, and

- (ii) treated as the income of that entity under the tax laws of the other Contracting State,

shall not be eligible for the benefits of the Convention.

Article 5

1. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business in which the business of the enterprise is wholly or partly carried on.

2. The term "permanent establishment" shall include especially:

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop;
- (f) a mine, quarry or 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. The term "permanent establishment" shall not be deemed 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 for collecting information, for the enterprise;

- (e) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research or for similar activities which have a preparatory or auxiliary character, for the enterprise;
- (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 of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other Contracting State through a broker, general commission agent or any other agent of an independent status, where 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

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 be defined in accordance with 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 immovable 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 and to income from immovable property used for the performance of professional services.

Article 7

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

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

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

Article 8

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. In respect of the operation of ships or aircraft in international traffic carried on by an enterprise of a Contracting State, that enterprise shall be exempt in the other Contracting State from the enterprise tax.

3. The provisions of paragraphs 1 and 2 shall likewise apply in respect of participation in pools, in a joint business or in an international operations agency of any kind by an enterprise of a Contracting State which is engaged in the operation of ships or aircraft in international traffic.

Article 9

1. Where

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

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

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

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 paragraph 1 after the expiry of the time limits provided in its laws and, in any case, after seven years from the end of the taxable year in which the profits which would be subject to such change would have accrued to that enterprise. The provisions of this paragraph shall not apply in the case of fraud or wilful default.

Article 10

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 10 per cent of the gross amount of the dividends.

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

(a) a company which has owned directly or indirectly, throughout a 365 day period that includes the date on which entitlement to the dividends is determined (for the purpose of computing that period, no account shall be taken of changes of ownership that would directly result from a merger or divisive reorganisation, or from a change of legal form, of the company that is the beneficial owner of the dividends or that pays the dividends), at least 10 per cent of:

(i) in the case where the company paying the dividends is a resident of Japan, the voting power of that company;

(ii) in the case where the company paying the dividends is a resident of Switzerland, the capital or voting power of that company; or

(b) a pension fund or pension scheme, provided that such dividends are derived from the activities described in clause (ii) of subparagraph (k) of paragraph 1 of Article 3.

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 or other rights, not being debt-claims, participating in profits, as well as 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, or performs in that other Contracting State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or 14, as the case may be, 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 or a fixed base 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.

8. A resident of a Contracting State shall not be considered the beneficial owner of the dividends paid by a resident of the other Contracting State in respect of shares or other similar interests if such shares or other similar interests would not have been established or acquired unless a person:

- (a) that is not entitled to benefits with respect to dividends paid by a resident of that other Contracting State which are equivalent to, or more favourable than, those available under this Convention to a resident of the first-mentioned Contracting State; and
- (b) that is not a resident of either Contracting State;

owned equivalent shares or other similar interests in the first-mentioned resident.

Article 11

1. Interest arising in a Contracting State and beneficially owned by a resident of the other Contracting State shall be taxable only in that other Contracting State.
2. Notwithstanding the provisions of paragraph 1, interest arising in a Contracting State that is determined by reference to receipts, sales, income, profits or other cash flow of the debtor or a related person, to any change in the value of any property of the debtor or a related person or to any dividend, partnership distribution or similar payment made by the debtor or a related person, or any other interest similar to such interest arising in a Contracting State, may be taxed in that Contracting State according to the laws of that Contracting State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the interest.
3. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures, 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. Income dealt with in Article 10 shall not be regarded as interest for the purposes of this Convention.
4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises through a permanent establishment situated therein, or performs in that other Contracting State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or 14, as the case may be, shall apply.

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

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

7. A resident of a Contracting State shall not be considered the beneficial owner of the interest arising in the other Contracting State in respect of a debt-claim if such debt-claim would not have been established unless a person:

- (a) that is not entitled to benefits with respect to the interest arising in the other Contracting State which are equivalent to, or more favourable than, those available under this Convention to a resident of the first-mentioned Contracting State; and
- (b) that is not a resident of either Contracting State;

owned an equivalent debt-claim against the first-mentioned resident.

Article 12

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 and films or tapes for radio or television broadcasting, 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, or performs in that other Contracting State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or 14, as the case may be, shall apply.

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

5. A resident of a Contracting State shall not be considered the beneficial owner of the royalties arising in the other Contracting State in respect of the use of the right or property if such royalties would not have been paid to the resident unless the resident paid royalties in respect of the use of the same right or property to a person:

- (a) that is not entitled to benefits with respect to royalties arising in that other Contracting State which are equivalent to, or more favourable than, those available under this Convention to a resident of the first-mentioned Contracting State; and
- (b) that is not a resident of either Contracting State.

Article 13

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 in a company or of interests in a trust may be taxed in the other Contracting State where the shares or the interests derive at least 50 per cent of their value directly or indirectly from immovable property referred to in Article 6 and situated in that other Contracting State.

3. (a) Where

(i) a Contracting State (including, for this purpose in the case of Japan, the Deposit Insurance Corporation of Japan) provides, pursuant to the laws concerning failure resolution involving imminent insolvency of financial institutions of that Contracting State, substantial financial assistance to a financial institution that is a resident of that Contracting State, and

(ii) a resident of the other Contracting State acquires shares in the financial institution from the first-mentioned Contracting State,

the first-mentioned Contracting State may tax gains derived by the resident of the other Contracting State from the alienation of such shares, provided that the alienation is made within five years from the first date on which such financial assistance was provided.

(b) The provisions of subparagraph (a) shall not apply if the resident of that other Contracting State acquired any shares in the financial institution from the first-mentioned Contracting State before the entry into force of the provisions of this paragraph or pursuant to a binding contract entered into before the entry into force of the provisions of this paragraph.

4. 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 or of any property, other than immovable property, pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such a fixed base, may be taxed in that other Contracting State.

5. 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.

6. 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

1. Income derived by a resident of a Contracting State in respect of professional services or other independent activities of a similar character shall be taxable only in that Contracting State unless he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in that other Contracting State but only so much of it as is attributable to that fixed base.

2. The term "professional services" includes, especially, independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

Article 15

1. Subject to the provisions of Articles 16, 18, and 19, 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 calendar 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 or a fixed base which the employer has in that other Contracting State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived by a resident of a Contracting State in respect of an employment, as a member of the regular complement of a ship or aircraft, that is exercised aboard a ship or aircraft operated in international traffic shall be taxable only in that Contracting State. Where, however, the ship or aircraft is operated by an enterprise of the other Contracting State, such remuneration may also be taxed in that other Contracting State.

Article 16

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

Article 17

1. Notwithstanding the provisions of Articles 14 and 15, 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 sportsman, from his 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 sportsman in his capacity as such accrues not to the entertainer or sportsman himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised.

Article 18

Subject to the provisions of paragraph 1 of Article 19, 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 19

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

2. The provisions of Articles 15, 16, 17 and 18 shall apply to remuneration or pensions in respect of an employment in connection with any trade or business carried on by a Contracting State or a political subdivision or a local authority thereof for the purpose of profits.

Article 20 (Deleted)

Article 21

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

Article 21A

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

Article 22

1. Items of income beneficially owned by a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention (hereinafter referred to as "other income" in this Article) shall be taxable only in that Contracting State.

2. The provisions of paragraph 1 shall not apply to other income, other than income from immovable property as defined in paragraph 2 of Article 6, if the beneficial owner of such other income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other Contracting State independent personal services from a fixed base situated therein, and the right or property in respect of which the other income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or 14, as the case may be, 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 other income 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 other income shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

4. A resident of a Contracting State shall not be considered the beneficial owner of the other income arising in the other Contracting State in respect of the right or property if such other income would not have been paid to the resident unless the resident paid other income in respect of the same right or property to a person:

- (a) that is not entitled to benefits with respect to other income arising in that other Contracting State which are equivalent to, or more favourable than, those available under this Convention to a resident of the first-mentioned Contracting State; and
- (b) that is not a resident of either Contracting State.

Article 22A

1. Except as otherwise provided in this Article, a resident of a Contracting State that derives income described in paragraph 3 of Article 10, paragraph 1 of Article 11, Article 12, paragraph 6 of Article 13 or Article 22 from the other Contracting State shall be entitled to the benefits granted for a taxable year by the provisions of those paragraphs or Articles only if such resident is a qualified person as defined in paragraph 2 and satisfies any other specified conditions in those paragraphs or Articles 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 on a recognised stock exchange specified in clause (i) or (ii) of subparagraph (c) of paragraph 8 and is regularly traded on one or more recognised stock exchanges;
- (d) a bank, an insurance company or a securities dealer that is established and regulated as such under the laws of the Contracting State of which it is a resident;

- (e) a person described in subparagraph (b) or (c) of paragraph 1 of Article 4, provided that in the case of a person described in subparagraph (b) of that paragraph as of the end of the prior taxable year more than 50 per cent of the person's beneficiaries, members or participants are individuals who are residents of either Contracting State; or
- (f) a person other than an individual, if residents of either Contracting State that are qualified persons by reason of subparagraph (a), (b), (c), (d) or (e) of this paragraph own, directly or indirectly, shares or other beneficial interests representing at least 50 per cent of the capital or of the voting power of the person.

3. Notwithstanding that a company that is a resident of a Contracting State may not be a qualified person, that resident shall be entitled to the benefits granted by the provisions of paragraph 3 of Article 10, paragraph 1 of Article 11, Article 12, paragraph 6 of Article 13 or Article 22 with respect to an item of income described in those paragraphs or Articles derived from the other Contracting State if that resident satisfies any other specified conditions in those paragraphs or Articles for the obtaining of such benefits and shares representing at least 75 per cent of the capital or of the voting power of the company are owned, directly or indirectly, by seven or fewer persons who are equivalent beneficiaries.

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 paragraph for the taxable year in which the 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 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 paragraph for the taxable year in which the payment is made 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 the benefits granted by the provisions of paragraph 3 of Article 10, paragraph 1 of Article 11, Article 12, paragraph 6 of Article 13 or Article 22 with respect to an item of income described in those paragraphs or Articles derived from the other Contracting State if:
- (i) that resident functions as a headquarters company for a multinational corporate group;
 - (ii) the item of income derived from that other Contracting State is derived in connection with, or is incidental to, the trade or business activity referred to in clause (ii) of subparagraph (b); and
 - (iii) that resident satisfies any other specified conditions in those paragraphs or Articles for the obtaining of such benefits.
- (b) A resident of a Contracting State shall be considered a headquarters company for a multinational corporate group for the purposes of subparagraph (a) only if:
- (i) that resident provides a substantial portion of the overall supervision and administration of the group or provides financing for the group;
 - (ii) the group consists of companies which are resident in and are engaged in an active trade or business in at least five countries, and the trade or business activities carried on in each of the five countries generate at least 5 per cent of the gross income of the group;

- (iii) the trade or business activities carried on in any one country other than that Contracting State generate less than 50 per cent of the gross income of the group;
 - (iv) no more than 50 per cent of its gross income is derived from the other Contracting State;
 - (v) that resident has, and exercises, independent discretionary authority to carry out the functions referred to in clause (i); and
 - (vi) that resident is subject to the same income taxation rules in that Contracting State as persons described in paragraph 6.
- (c) For the purposes of subparagraph (b), a resident of a Contracting State shall be deemed to satisfy the gross income requirements described in clause (ii), (iii) or (iv) of that subparagraph for the taxable year in which the item of income is derived if that resident satisfies each of those gross income requirements when averaging the gross income of the three taxable years preceding that taxable year.
6. (a) Notwithstanding that a resident of a Contracting State may not be a qualified person, that resident shall be entitled to the benefits granted by the provisions of paragraph 3 of Article 10, paragraph 1 of Article 11, Article 12, paragraph 6 of Article 13 or Article 22 with respect to an item of income described in those paragraphs or Articles derived from the other Contracting State if:
- (i) that resident is carrying on business in the first-mentioned Contracting State (other than the business of making or managing investments for the resident's own account, unless the business is banking, insurance or securities business carried on by a bank, insurance company or securities dealer);
 - (ii) the item of income derived from the other Contracting State is derived in connection with, or is incidental to, that business; and

- (iii) that resident satisfies any other specified conditions in those paragraphs or Articles for the obtaining of such benefits.
- (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 the 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 the other Contracting State. Whether such business is substantial for the purposes of this paragraph shall be determined on the basis of all the facts and circumstances.
- (c) In determining whether a person is carrying on business in a Contracting State under subparagraph (a) of this paragraph, the business conducted by a partnership in which that person is a partner and the business conducted by persons connected to such person shall be deemed to be conducted by such person. A person shall be connected to another if that person owns, directly or indirectly, shares or beneficial interests representing at least 50 per cent of the capital or of the voting power of the other person, or a third person owns, directly or indirectly, shares or beneficial interests representing at least 50 per cent of the capital or of the voting power of 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.

7. A resident of a Contracting State that is neither a qualified person nor entitled under paragraph 3, 5 or 6 to the benefits granted by the provisions of paragraph 3 of Article 10, paragraph 1 of Article 11, Article 12, paragraph 6 of Article 13 or Article 22 with respect to an item of income described in those paragraphs or Articles shall, nevertheless, be granted such benefits if the competent authority of the other Contracting State determines, in accordance with the laws or administrative practice of that other Contracting State, that the establishment, acquisition or maintenance of such resident and the conduct of the operations of such resident are considered as not having the obtaining of such benefits as one of the principal purposes.

8. For the purposes of this Article:

- (a) the term "qualified governmental entity" means the Government of a Contracting State, any political subdivision or local authority thereof, the Bank of Japan, the Swiss National Bank or a person a majority of the capital of which is owned, directly or indirectly, by the Government of a Contracting State or 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 capital or of the voting power of the company;
- (c) the term "recognised stock exchange" means:
 - (i) any stock exchange established by a Financial Instruments Exchange or an approved-type financial instruments firms association under the Financial Instruments and Exchange Law (Law No. 25 of 1948) of Japan;
 - (ii) any Swiss stock exchange on which registered dealings in shares take place;
 - (iii) the London Stock Exchange, the Irish Stock Exchange and the stock exchanges of Amsterdam, Brussels, Düsseldorf, Frankfurt, Hamburg, Johannesburg, Lisbon, Luxembourg, Madrid, Mexico, Milan, New York, Paris, Seoul, Singapore, Stockholm, Sydney, Toronto and Vienna, and the NASDAQ system;

- (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 "equivalent beneficiary" means:
 - (i) a resident of a state that has a convention for the avoidance of double taxation between that state and the Contracting State from which the benefits of this Convention are claimed such that:
 - (aa) that convention contains provisions for effective exchange of information;
 - (bb) that resident is a qualified person under the limitation on benefits provisions in that convention or, where there are no such provisions in that convention, would be a qualified person when that convention is read as including provisions corresponding to paragraph 2; and
 - (cc) with respect to an item of income referred to in paragraph 3 of Article 10, paragraph 1 of Article 11, Article 12, paragraph 6 of Article 13 or Article 22 that resident would be entitled under that convention to a rate of tax with respect to the particular class of income for which the benefits are being claimed under this Convention that is at least as low as the rate applicable under this Convention; or
 - (ii) a qualified person by reason of subparagraph (a), (b), (c), (d) or (e) of paragraph 2;
- (e) the term "gross income" means the total revenues derived by an enterprise from its business, less the direct costs of obtaining such revenues.

Article 23

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 Switzerland which may be taxed in Switzerland in accordance with the provisions of this Convention, the amount of Swiss 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. For the purposes of paragraph 1, income beneficially owned by a resident of Japan which may be taxed in Switzerland in accordance with the provisions of this Convention shall be deemed to arise from sources in Switzerland.

3. Where a resident of Switzerland derives income which, in accordance with the provisions of this Convention, may be taxed in Japan, Switzerland shall, subject to the provisions of paragraph 4 or 6, exempt such income from tax but may, in calculating tax on the remaining income of that resident, apply the rate of tax which would have been applicable if the exempted income had not been so exempted. However, where that resident derives gains referred to in the provisions of paragraph 2 of Article 13, such exemption shall apply to such gains only if the amount of tax levied in Japan in accordance with the provisions of that paragraph is demonstrated.

4. Where a resident of Switzerland derives dividends or interest which, in accordance with the provisions of Article 10 or 11, may be taxed in Japan, Switzerland shall allow, upon request, a relief to such resident. The relief may consist of:

- (a) a deduction from the tax on the income of that resident of an amount equal to the tax levied in Japan in accordance with the provisions of Articles 10 and 11; such deduction shall not, however, exceed that part of the Swiss income tax, as computed before the deduction is given, which is appropriate to the income which may be taxed in Japan, or
- (b) a lump sum reduction of the Swiss tax determined by standardised formulae which have regard to the general principles of the relief referred to in subparagraph (a) above, or

- (c) a partial exemption of such income from Swiss tax, in any case consisting at least of the deduction of the tax levied in Japan from the gross amount of income derived from Japan.

Switzerland shall determine the applicable relief and regulate the procedure in accordance with the provisions relating to the carrying out of international conventions of the Swiss Confederation for the avoidance of double taxation.

5. A company which is a resident of Switzerland and which derives dividends from a company which is a resident of Japan shall be entitled, for the purposes of Swiss tax with respect to such dividends, to the same relief which would be granted to the company if the company paying the dividends were a resident of Switzerland.

6. Where a resident of Switzerland derives income covered by subparagraph (a) of paragraph 3 of Article 13, Switzerland shall allow, upon request, a deduction from the Swiss tax on this income of an amount equal to the tax levied in Japan, in accordance with paragraph 3 of Article 13; such deduction shall not, however, exceed that part of the Swiss income tax, as computed before the deduction is given, which is appropriate to the income which may be taxed in Japan.

7. The provisions of paragraph 3 shall not apply to income derived by a resident of Switzerland where Japan applies the provisions of this Convention to exempt such income from tax or applies the provisions of paragraph 2 of Article 10 or paragraph 2 of Article 11 to such income.

Article 24

1. The 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 are or may be subjected.

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

3. Except where the provisions of paragraph 1 of Article 9, paragraph 6 of Article 11, paragraph 4 of Article 12, or paragraph 3 of Article 22 apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned Contracting State.

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

5. In this Article the term "taxation" means taxes of every kind and description.

6. The application of the provisions of this Article shall not be limited by the provisions of Article 1.

Article 25

1. 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 this 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 the Convention.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at an appropriate 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 not in accordance with this Convention.

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.

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

5. Where,

- (a) under paragraph 1, a person has presented a case to the competent authority of a Contracting State on the basis that the actions of one or both of the Contracting States have resulted for that person in taxation not in accordance with the provisions of this Convention, and
- (b) the competent authorities are unable to reach an agreement to resolve that case pursuant to paragraph 2 within three years from the date when all the information required by the competent authorities in order to address the case has been provided to both competent authorities,

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

6.
 - (a) Where the competent authority of a Contracting State has suspended the procedure for resolving a case by mutual agreement pursuant to paragraphs 1 and 2 (hereinafter in this Article referred to as the "mutual agreement procedure") because a case with respect to one or more of the same issues is pending before a court or administrative tribunal, the period provided in subparagraph (b) of paragraph 5 shall stop running until the case has been suspended or withdrawn.
 - (b) Where a person who presented a case and the competent authority of a Contracting State have agreed to suspend the mutual agreement procedure, the period provided in subparagraph (b) of paragraph 5 shall stop running until the suspension has been lifted.
 - (c) Where the competent authorities of the Contracting States agree that a person directly affected by the case has failed to provide in a timely manner any additional material information requested by either competent authority after the start of the period provided in subparagraph (b) of paragraph 5, that period shall be extended for an amount of time equal to the period beginning on the date by which the information was requested and ending on the date on which that information was provided.
7.
 - (a) The following rules shall govern the appointment of arbitrators:
 - (i) An arbitration panel shall consist of three individual arbitrators with expertise or experience in international tax matters.
 - (ii) Each of the competent authorities of the Contracting States shall appoint one arbitrator. The two arbitrators so appointed shall appoint the third arbitrator who shall serve as Chair of the arbitration panel. The Chair shall not be a national or resident of either Contracting State.

- (iii) Each arbitrator must be impartial and independent of the competent authorities, tax administrations, and ministries of finance of the Contracting States and of all persons directly affected by the case (as well as their advisors) at the time of accepting an appointment, maintain his or her impartiality and independence throughout the arbitration proceedings, and avoid any conduct for a reasonable period of time thereafter which may damage the appearance of impartiality and independence of the arbitrators with respect to the arbitration proceedings.
- (b) The competent authorities of the Contracting States shall ensure that arbitrators and their staff agree in writing, prior to their acting in the arbitration proceedings, to treat any information relating to the arbitration proceedings consistently with the confidentiality and non-disclosure obligations provided for in paragraph 2 of Article 25A and the applicable laws of the Contracting States.
- (c) Solely for the purposes of the application of the provisions of this Article and Article 25A and of the domestic laws of the Contracting States related to the exchange of information, confidentiality, and administrative assistance, arbitrators and a maximum of three staff per arbitrator (and prospective arbitrators solely to the extent necessary to verify their ability to fulfil the requirements of arbitrators) shall be considered to be persons or authorities to whom information may be disclosed. Information received by the arbitration panel or prospective arbitrators and information that the competent authorities of the Contracting States receive from the arbitration panel shall be considered information that is exchanged under the provisions of paragraph 1 of Article 25A.

8. (a) An arbitration decision shall be final.
 - (b) The arbitration decision shall not be binding on both Contracting States, if a final decision of the courts of one of the Contracting States holds that the arbitration decision is invalid. In such a case, the request for arbitration under paragraph 5 shall be considered not to have been made, and the arbitration proceedings shall be considered not to have taken place (except for the purposes of subparagraphs (b) and (c) of paragraph 7, and paragraph 11). In such a case, a new request for arbitration may be made unless the competent authorities of the Contracting States agree that such a new request should not be permitted.
 - (c) An arbitration decision shall have no precedential value.
9. (a) If a person directly affected by the case does not accept the mutual agreement that implements the arbitration decision, the case shall not be eligible for any further consideration by the competent authorities of the Contracting States.
 - (b) The mutual agreement that implements the arbitration decision on the case shall be considered not to be accepted by a person directly affected by the case if any person directly affected by the case does not, within 60 days after the date on which notification of the mutual agreement is sent to the person, withdraw all issues resolved in the mutual agreement implementing the arbitration decision from consideration by any court or administrative tribunal or otherwise terminate any pending court or administrative proceedings with respect to such issues in a manner consistent with that mutual agreement.
10. For the purposes of this Article, the arbitration proceedings, as well as, in the case of subparagraphs (a) and (b), the mutual agreement procedure, with respect to a case shall terminate if, at any time after the request for arbitration has been made and before the arbitration panel has delivered its decision to the competent authorities of the Contracting States:
- (a) the competent authorities of the Contracting States reach a mutual agreement to resolve the case pursuant to paragraph 2;

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

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

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

- (a) cases falling within paragraph 3 of Article 4; and
- (b) cases concerning a change of profits in the circumstances referred to in paragraph 1 of Article 9 relating to hard-to-value intangibles, provided that such change is made with respect to a taxable year for which profits may be subject to such change under the provisions regarding time limits of the laws of the Contracting State making such change and the provisions of paragraph 3 of Article 9 but concerns any transaction involving hard-to-value intangibles carried out in another taxable year for which profits shall not be subject to such change under those provisions.

Article 25A

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

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

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

- (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
- (b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
- (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy (ordre public).

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

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

2. Notwithstanding the provisions of Article 4, an individual who is a member of a diplomatic mission, consular post or permanent mission of a Contracting State which is situated in the other Contracting State or in a third State shall be deemed, for the purposes of this Convention, to be a resident of the sending State if:

- (a) in accordance with international law he is not liable to tax in the receiving State in respect of income from sources outside that State, and
- (b) he is liable in the sending State to the same obligations in relation to tax on his total income as are residents of that State.

3. The Convention shall not apply to international organisations, to organs or officials thereof and to persons who are members of a diplomatic mission, consular post or permanent mission of a third State, being present in a Contracting State and not treated in either Contracting State as residents in respect of taxes on income.

Article 27

1. This Convention shall be ratified and the instruments of ratification shall be exchanged at Berne 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:

- (a) in Japan:
as respects income derived during any taxable year beginning on or after the first day of January of the calendar year in which this Convention enters into force; and

(b) in Switzerland:

for any taxable year beginning on or after the first day of January of the calendar year in which this Convention enters into force.

Article 28

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 channel, written notice of termination. In such event, this Convention shall cease to have effect:

(a) in Japan:

as respects income derived during any taxable year beginning on or after the first day of January of the calendar year next following that in which the notice is given; and

(b) in Switzerland:

for any taxable year beginning on or after the first day of January of the calendar year next following that in which the notice is given.

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

DONE at Tokyo on the nineteenth day of January, 1971 in six originals, two each in the Japanese, German and English languages, all texts being equally authentic and, in case there is any divergence of interpretation between the Japanese and the German texts, the English text shall prevail.

For the Government of
Japan:

Kiichi Aichi

For the Swiss Federal
Council:

Emil Stadelhofer

Protocol

At the signing of the Protocol amending the Convention between Japan and Switzerland for the Avoidance of Double Taxation with respect to Taxes on Income signed on 19 January 1971, the Government of Japan and the Swiss Federal Council have agreed upon the following provisions, which shall form an integral part of the Convention:

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.

2. With reference to subparagraph (k) of paragraph 1 of Article 3 of the Convention:

It is understood that a pension fund or pension scheme shall be treated as exempt from tax on income derived with respect to the activities described in clause (ii) of that subparagraph even though it is subjected to the tax stipulated in Article 8 or 10-2 of the Corporation Tax Law (Law No. 34 of 1965) of Japan or paragraph 1 of Article 20 of its supplementary provisions.

3. With reference to paragraph 3 of Article 7 and paragraph 2 of Article 9 of the Convention:

It is understood that a Contracting State is obliged to make an adjustment pursuant to paragraph 3 of Article 7 or paragraph 2 of Article 9 of the Convention only if that Contracting State agrees that the adjustment made by the other Contracting State is justified both in the principle contained in paragraph 2 of Article 7 or paragraph 1 of Article 9 of the Convention and as regards the amount assessed under such principle.

4. With reference to Article 10 of the Convention:

The provisions of subparagraph (a) of paragraph 3 of that Article shall not apply in the case of dividends paid by a company which is entitled to a deduction for dividends paid to its beneficiaries in computing its taxable income in the Contracting State of which the company paying the dividends is a resident.

5. With reference to Article 22A of the Convention:

It is understood that the term "insurance" includes re-insurance.

6. With reference to Article 25A 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 information if the other Contracting State has not pursued all reasonable measures of obtaining such information available under the laws and administrative practice of that other Contracting State, except those measures that would give rise to disproportionate difficulties.
- (b) It is understood that the exchange of information provided for in that Article does not include measures aimed only at the simple collection of pieces of evidence ("fishing expeditions").
- (c) It is understood that, where information is requested by a Contracting State in accordance with that Article, the competent authority of that Contracting State shall provide the following information to the competent authority of the other Contracting State:
 - (i) information sufficient to identify the person under examination (typically, name and, to the extent known, address, account number or similar identifying information);
 - (ii) the period of time with respect to the requested information;
 - (iii) 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;
 - (iv) the tax purpose for which the information is sought; and
 - (v) the name and, to the extent known, the address of any person believed to be in possession of the requested information.

- (d) Although Article 25A of the Convention does not restrict the possible methods for exchanging information, it shall not commit the Contracting States to exchange information on an automatic or a spontaneous basis.
- (e) 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.
- (f) It is understood that, where information is requested by a Contracting State in accordance with that Article, the administrative procedural rules regarding taxpayers' rights provided for in the other Contracting State remain applicable to the extent that they do not prevent or unduly delay effective exchange of information.

This Protocol enters into force on the same date of the entry into force of the Protocol amending the Convention between Japan and Switzerland for the Avoidance of Double Taxation with respect to Taxes on Income signed on 19 January 1971.

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

DONE in duplicate at Berne this twenty-first day of May, 2010, in the Japanese, German and English languages, all texts being equally authoritative and, in the case there is any divergence of interpretation between the Japanese and the German texts, the English text shall prevail.

For the Government of
Japan:

Ichiro Komatsu

For the Swiss Federal
Council:

Hans-Rudolf Merz