

## **INCOME TAX TREATY BETWEEN JAPAN AND THE UNITED STATES**

THE TREATY BELOW ENTERED INTO FORCE ON JANUARY 1, 2005

*CONVENTION BETWEEN  
THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE  
GOVERNMENT OF JAPAN FOR THE AVOIDANCE OF DOUBLE TAXATION AND  
THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME*

### **ARTICLE 22 Limitation on Benefits**

1. Except as otherwise provided in this Article, a resident of a Contracting State that derives income from the other Contracting State shall be entitled to all the benefits accorded to residents of a Contracting State for a taxable year by the provisions of other Articles of this Convention only if such resident satisfies any other specified conditions for the obtaining of such benefits and is either:
  - (a) an individual;
  - (b) a Contracting State, any political subdivision or local authority thereof, the Bank of Japan or the Federal Reserve Banks;
  - (c) a company, if:
    - (i) the principal class of its shares, and any disproportionate class of its shares, is listed or registered on a recognized stock exchange specified in clause (i) or (ii) of subparagraph (b) of paragraph 5 and is regularly traded on one or more recognized stock exchanges; or
    - (ii) at least 50 percent of each class of shares in the company is owned directly or indirectly by five or fewer residents entitled to benefits under clause (i), provided that, in the case of indirect ownership, each intermediate owner is a person entitled to the benefits of this Convention under this paragraph;
  - (d) a person described in subparagraph (c) of paragraph 1 of Article 4;
  - (e) a pension fund, provided that as of the end of the prior taxable year more than 50 percent of its beneficiaries, members or participants are individuals who are residents of either Contracting State; or
  - (f) a person other than an individual, if:

- (i) residents that are described in subparagraph (a), (b), (d) or (e), or clause (i) of subparagraph (c), own, directly or indirectly, at least 50 percent of each class of shares or other beneficial interests in the person, and
- (ii) less than 50 percent of the person's gross income for the taxable year is paid or accrued by the person in that taxable year, directly or indirectly, to persons who are not residents of either Contracting State in the form of payments that are deductible in computing its taxable income in the Contracting State of which it is a resident (but not including arm's length payments in the ordinary course of business for services or tangible property and payments in respect of financial obligations to a commercial bank, provided that where such a bank is not a resident of a Contracting State such payment is attributable to a permanent establishment of that bank situated in one of the Contracting States).

2.

- (a) A resident of a Contracting State shall be entitled to benefits of this Convention with respect to an item of income derived from the other Contracting State if the resident is engaged in the first- mentioned Contracting State in the active conduct of a trade or business, other than the business of making or managing investments for the resident's own account, unless these activities are banking, insurance or securities activities carried on by a commercial bank, insurance company or registered securities dealer, the income derived from the other Contracting State is derived in connection with, or is incidental to, that trade or business and that resident satisfies any other specified conditions for the obtaining of such benefits.
- (b) If a resident of a Contracting State derives an item of income from a trade or business activity 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) shall be considered to be satisfied with respect to such item only if the trade or business activity carried on by the resident in the first-mentioned Contracting State is substantial in relation to the trade or business activity carried on by the resident or such person in the other Contracting State. Whether a trade or business activity is substantial for the purposes of this paragraph will be determined based on all the facts and circumstances.

3.

- (a) Where the provisions of clause (ii) of subparagraph (c) of paragraph 1 apply in respect of taxation by withholding at source, a resident of a Contracting State shall be considered to satisfy the conditions described in that clause for a taxable year in which the payment is made if such resident satisfies those conditions during the part of that taxable year which precedes the date of

payment of the item of income (or, in the case of dividends, the date on which entitlement to the dividends is determined) and, unless that date is the last day of that taxable year, during the whole of the preceding taxable year.

- (b) Where the provisions of clause (i) of subparagraph (f) of paragraph 1 apply:
    - (i) in respect of taxation by withholding at source, a resident of a Contracting State shall be considered to satisfy the conditions described in that clause for a taxable year in which the payment is made if such resident satisfies those conditions during the part of that taxable year which precedes the date of payment of the item of income (or, in the case of dividends, the date on which entitlement to the dividends is determined) and, unless that date is the last day of that taxable year, during the whole of the preceding taxable year; and
    - (ii) in all other cases, a resident of a Contracting State shall be considered to satisfy the conditions described in that clause for a taxable year in which the payment is made if such resident satisfies those conditions on at least half the days of the taxable year.
  - (c) Where the provisions of clause (ii) of subparagraph (f) of paragraph 1 apply in respect of taxation by withholding at source in Japan, a resident of the United States shall be considered to satisfy the conditions described in that subparagraph for a taxable year in which the payment is made if such resident satisfies those conditions for the three taxable years preceding that taxable year.
4. A resident of a Contracting State that is not described in paragraph 1 and is not entitled to benefits with respect to an item of income under paragraph 2 shall, nevertheless, be granted benefits of this Convention if the competent authority of the Contracting State from which benefits are claimed determines, in accordance with its domestic law or administrative practice, that the establishment, acquisition or maintenance of such resident and the conduct of its operations are considered as not having the obtaining of benefits under the Convention as one of its principal purposes.
5. For the purposes of this Article:
- (a) the term “disproportionate class of shares” means any class of shares of a company that is a resident of a Contracting State which is subject to terms or other arrangements that entitle the holders of that class of shares to a portion of the income of the company derived from the other Contracting State that is larger than the portion such holders would receive absent such terms or arrangements;

- (b) the term “recognized stock exchange” means:
- (i) any stock exchange established under the terms of the Securities and Exchange Law (Law No. 25 of 1948) of Japan;
  - (ii) the NASDAQ System and any stock exchange registered with the Securities and Exchange Commission as a national securities exchange under the Securities Exchange Act of 1934 of the United States; and
  - (iii) any other stock exchange agreed upon by the competent authorities; and
- (c) the term “gross income” means the total revenues derived by a resident of a Contracting State from its business, less the direct costs of obtaining such revenues.

## **PROTOCOL**

11. With reference to subparagraph (c) of paragraph 1 of Article 22 of the Convention, the shares in a class of shares are considered to be regularly traded on one or more recognized stock exchanges in a taxable year if the aggregate number of shares of that class traded on such stock exchange or exchanges during the preceding taxable year is at least 6 percent of the average number of shares outstanding in that class during that preceding taxable year.
12. With reference to paragraph 2 of Article 22 of the Convention, in determining whether a person is “engaged . . . in the active conduct of a trade or business” in a Contracting State under that paragraph, activities conducted by a partnership in which such person is a partner and activities conducted by persons connected to such person shall be deemed to be conducted by such person. A person shall be connected to another if one possesses at least 50 percent of the beneficial interest in the other (or, in the case of a company, at least 50 percent of the aggregate vote and value of the company’s shares) or if another person possesses, directly or indirectly, at least 50 percent of the beneficial interest (or, in the case of a company, at least 50 percent of the aggregate vote and value of the company’s shares) in each person.