

No. 3353

**UNITED STATES OF AMERICA
and
JAPAN**

Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on estates, inheritances and gifts. Signed at Washington, on 16 April 1954

Official texts: English and Japanese.

Registered by the United States of America on 8 May 1956.

**ÉTATS-UNIS D'AMÉRIQUE
et
JAPON**

Convention tendant à éviter la double imposition et à prévenir l'évasion fiscale en matière d'impôts sur les successions, les legs et les donations. Signée à Washington, le 16 avril 1954

Textes officiels anglais et japonais.

Enregistrée par les États-Unis d'Amérique le 8 mai 1956.

No. 3353. CONVENTION¹ BETWEEN THE UNITED STATES OF AMERICA AND JAPAN FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON ESTATES, INHERITANCES AND GIFTS. SIGNED AT WASHINGTON, ON 16 APRIL 1954

The Government of the United States of America and the Government of Japan, desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on estates, inheritances, and gifts, have appointed for that purpose as their respective Plenipotentiaries :

The Government of the United States of America :

Mr. Walter Bedell Smith, Acting Secretary of State of the United States of America, and

The Government of Japan :

Mr. Sadao Iguchi, Ambassador Extraordinary and Plenipotentiary of Japan to the United States of America,

who, having communicated to one another their respective full powers, found in good and due form, have agreed upon the following Articles :

Article I

(1) The taxes referred to in the present Convention are :

(a) In the case of the United States of America :

The Federal estate and gift taxes.

(b) In the case of Japan :

The inheritance tax (including the gift tax).

(2) The present Convention shall also apply to any other tax on estates, inheritances or gifts which has a character substantially similar to those referred to in paragraph (1) of this Article and which may be imposed by either contracting State after the date of signature of the present Convention.

Article II

(1) As used in the present Convention :

¹ Came into force on 1 April 1955, by the exchange of the instruments of ratification at Tokyo, in accordance with article IX.

- (a) The term "United States" means the United States of America, and when used in a geographical sense means the States, the Territories of Alaska and Hawaii, and the District of Columbia.
- (b) The term "Japan", when used in a geographical sense, means all the territory in which the laws relating to the tax referred to in paragraph (1) (b) of Article I are enforced.
- (c) The term "tax" means those taxes referred to in paragraph (1) (a) or (b) of Article I, as the context requires.
- (d) The term "competent authorities" means, in the case of the United States, the Commissioner of Internal Revenue as authorized by the Secretary of the Treasury ; and, in the case of Japan, the Minister of Finance or his authorized representative.

(2) In the application of the provisions of the present Convention by either contracting State any term not otherwise defined shall, unless the context otherwise requires, have the meaning which such term has under the laws of such State relating to the tax.

(3) For the purposes of the present Convention, each contracting State may determine in accordance with its laws whether a decedent at the time of his death or a beneficiary of a decedent's estate at the time of such decedent's death, or a donor at the time of the gift or a beneficiary of a gift at the time of the gift, was domiciled therein or a national thereof.

Article III

(1) If a decedent at the time of his death or a donor at the time of the gift was a national of or domiciled in the United States, or if a beneficiary of a decedent's estate at the time of such decedent's death or a beneficiary of a gift at the time of the gift was domiciled in Japan, the *situs* at the time of the transfer of any of the following property or property rights shall, for the purpose of the imposition of the tax and for the purpose of the credit authorized by Article V, be determined exclusively in accordance with the following rules :

- (a) Immovable property or rights therein (not including any property for which specific provision is otherwise made in this Article) shall be deemed to be situated at the place where the land involved is located.
- (b) Tangible movable property (including currency and any other form of money recognized as legal tender in the place of issue and excepting such property for which specific provision is otherwise made in this Article) shall be deemed to be situated at the place where such property is physically located, or, if *in transitu*, at the place of destination.
- (c) Debts (including bonds, promissory notes, bills of exchange, bank deposits and insurance, except bonds or other negotiable instruments in bearer form and such debts for which specific provision is otherwise made in this Article) shall be deemed to be situated at the place where the debtor resides.

- (d) Shares or stock in a corporation shall be deemed to be situated at the place under the laws of which such corporation was created or organized.
- (e) Ships and aircraft shall be deemed to be situated at the place where they are registered.
- (f) Goodwill as a trade, business or professional asset shall be deemed to be situated at the place where the trade, business or profession to which it pertains is carried on.
- (g) Patents, trade-marks, utility models and designs shall be deemed to be situated at the place where they are registered (or used in case they are not registered).
- (h) Copyrights, franchises, rights to artistic and scientific works and rights or licenses to use any copyrighted material, artistic and scientific works, patents, trade-marks, utility models or designs shall be deemed to be situated at the place where they are exercisable.
- (i) Mining or quarrying rights or mining leases shall be deemed to be situated at the place of such mining or quarrying.
- (j) Fishing rights shall be deemed to be situated in the country in whose government's jurisdiction such rights are exercisable.
- (k) Any property for which provision is not hereinbefore made shall be deemed to be situated in accordance with the laws of the contracting State imposing the tax solely by reason of the *situs* of property within such State, but if neither of the contracting States imposes the tax solely by reason of the *situs* of property therein, then any such property shall be deemed to be situated in accordance with the laws of each contracting State.

(2) The application of the provisions of paragraph (1) of this Article shall be limited to the particular property, and any portion thereof, which without such provisions would be subjected to the taxes of both contracting States or would be so subjected except for a specific exemption.

Article IV

Where one of the contracting States imposes the tax solely by reason of the *situs* of property within such State, in the case of a decedent who at the time of his death, or of a donor who at the time of the gift, was a national of or domiciled in the United States, or in the case of a beneficiary of a decedent's estate who at the time of such decedent's death, or a beneficiary of a gift who at the time of the gift, was domiciled in Japan, the contracting State so imposing the tax :

- (a) shall allow a specific exemption which would be applicable under its laws if the decedent, donor, or beneficiary, as the case may be, had been a national of or domiciled in such State, in an amount not less than the proportion thereof

which (A) the value of the property, situated according to Article III in such State and subjected to the taxes of both contracting States or which would be so subjected except for a specific exemption, bears to (B) the value of the total property which would be subjected to the tax of such State if such decedent, donor, or beneficiary had been a national of or domiciled in such State ; and

- (b) shall (except for the purpose of subparagraph (a) of this paragraph and for the purpose of any other proportional allowance otherwise provided) take no account of property situated according to Article III outside such State in determining the amount of the tax.

Article V

(1) Where either contracting State imposes the tax by reason of the nationality thereof or the domicile therein of a decedent or a donor or a beneficiary of a decedent's estate or of a gift, such State shall allow against its tax (computed without application of this Article) a credit for the tax imposed by the other contracting State with respect to property situated at the time of the transfer in such other State and included for the taxes of both States (but the amount of the credit shall not exceed that portion of the tax imposed by the crediting State which is attributable to such property). The provisions of this paragraph shall not apply with respect to any property referred to in paragraph (2) of this Article.

(2) Where each contracting State imposes the tax by reason of the nationality thereof or the domicile therein of a decedent or a donor or a beneficiary, with respect to any property situated at the time of the transfer outside both contracting States (or deemed by each contracting State to be situated in its territory, or deemed by one contracting State to be situated in either contracting State and deemed by the other contracting State to be situated outside both contracting States or deemed by each contracting State to be situated in the other contracting State), each contracting State shall allow against its tax (computed without application of this Article) a credit for a part of the tax imposed by the other contracting State attributable to such property. The total of the credits authorized by this paragraph shall be equal to the amount of the tax imposed with respect to such property by the contracting State imposing the smaller amount of the tax with respect to such property, and shall be divided between both contracting States in proportion to the amount of the tax imposed by each contracting State with respect to such property.

(3) The credit authorized by this Article, if applicable, shall be in lieu of any credit for the same tax authorized by the laws of the crediting State, the credit applicable for the particular tax being either authorized by this Article or credit authorized by such laws, whichever is the greater. For the purposes of this Article, the amount of the tax of each contracting State attributable to any designated property shall be ascertained after taking into account any applicable diminution

or credit against its tax with respect to such property (other than any credit under paragraph (1) or (2) of this Article), provided, however, in case another credit for the tax of any other foreign State is allowable with respect to the same property pursuant to any other Convention between the crediting State under the present Convention and such other foreign State, or pursuant to the laws of the crediting State, the total of such credits shall not exceed the amount of tax of the crediting State attributable to such property computed before allowance of such credits.

(4) Credit against the tax of one of the contracting States for the tax of the other contracting State shall be allowed under this Article only where both such taxes have been simultaneously imposed at the time of a decedent's death or at the time of a gift.

(5) No credit resulting from the application of this Article shall be allowed after more than five years from the due date of the tax against which credit would otherwise be allowed, unless claim therefor was filed within such five-year period. Any refund resulting from the application of this Article shall be made without payment of interest on the amount so refunded, unless otherwise specifically authorized by the crediting State.

(6) Credit against the tax of one of the contracting States shall not be finally allowed for the tax of the other contracting State until the latter tax (reduced by credit authorized under this Article, if any) has been paid.

Article VI

(1) The competent authorities of both contracting States shall exchange such information available under the respective tax laws of both contracting States as is necessary for carrying out the provisions of the present Convention or for the prevention of fraud or for the administration of statutory provisions against tax avoidance in relation to the tax. Any information so exchanged shall be treated as secret and shall not be disclosed to any person other than those, including a court, concerned with the assessment and collection of the tax or the determination of appeals in relation thereto. No information shall be exchanged which would disclose any trade, business, industrial or professional secret or any trade process.

(2) Each of the contracting States may collect the tax imposed by the other contracting State (as though such tax were the tax of the former State) as will ensure that the credit or any other benefit granted under the present Convention by such other State shall not be enjoyed by persons not entitled to such benefits.

Article VII

Where a representative of the estate of a decedent or a beneficiary of such estate or a donor or a beneficiary of a gift shows proof that the action of the tax authorities of either contracting State has resulted, or will result, in double taxation

contrary to the provisions of the present Convention, such representative, donor or beneficiary shall be entitled to present the facts to the competent authorities of the contracting State of which the decedent was a national at the time of his death or of which the donor or beneficiary is a national, or if the decedent was not a national of either of the contracting States at the time of his death or if the donor or the beneficiary is not a national of either of the contracting States, to the competent authorities of the contracting State in which the decedent was domiciled or resident at the time of his death or in which the donor or beneficiary is domiciled or resident. Should the claim be deemed worthy of consideration, the competent authorities of such State to which the facts are so presented shall undertake to come to an agreement with the competent authorities of the other contracting State with a view to equitable avoidance of the double taxation in question.

Article VIII

(1) The provisions of the present Convention shall not be construed to deny or affect in any manner the right of diplomatic and consular officers to other or additional exemptions now enjoyed or which may hereafter be granted to such officers.

(2) The provisions of the present Convention shall not be construed so as to increase the tax imposed by either contracting State.

(3) Should any difficulty or doubt arise as to the interpretation or application of the present Convention, or its relationship to Conventions between one of the contracting States and any other State, the competent authorities of the contracting States may settle the question by mutual agreement; it being understood, however, that this provision shall not be construed to preclude the contracting States from settling by negotiation any dispute arising under the present Convention.

(4) The competent authorities of both contracting States may prescribe regulations necessary to interpret and carry out the provisions of the present Convention and may communicate with each other directly for the purpose of giving effect to the provisions of the present Convention.

Article IX

(1) The present Convention shall be ratified and the instruments of ratification shall be exchanged at Tokyo as soon as possible.

(2) The present Convention shall enter into force on the date of exchange of instruments of ratification and shall be applicable to estates or inheritances in the case of persons who die on or after the date of such exchange and to gifts made on or after that date.

(3) Either of the contracting States may terminate the present Convention at any time after a period of five years shall have expired from the date on which the Convention enters into force, by giving to the other contracting State notice of termination, provided that such notice is given on or before the 30th day of June and, in such event, the present Convention shall cease to be effective for the taxable years beginning on or after the first day of January of the calendar year next following that in which such notice is given.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries have signed the present Convention.

DONE at Washington, in duplicate, in the English and Japanese languages, each text having equal authenticity, this sixteenth day of April, 1954.

For the United States of America :

Walter Bedell SMITH

For Japan :

S. IGUCHI
