

No. 3354

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**UNITED STATES OF AMERICA  
and  
JAPAN**

**Convention (with exchange of notes) for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income. Signed at Washington, on 16 April 1954**

*Official texts of the Convention: English and Japanese.*

*Official text of the notes: English.*

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

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**ÉTATS-UNIS D'AMÉRIQUE  
et  
JAPON**

**Convention (avec échange de notes) tendant à éviter la double imposition et à prévenir l'évasion fiscale en matière d'impôts sur le revenu. Signée à Washington, le 16 avril 1954**

*Textes officiels de la Convention: anglais et japonais.*

*Texte officiel des notes: anglais.*

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

No. 3354. CONVENTION<sup>1</sup> 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 INCOME. SIGNED AT WASHINGTON, ON 16 APRIL 1954

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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 income, 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 income taxes, including surtaxes.

(b) In the case of Japan :

The income tax and the corporation tax.

(2) The present Convention shall also apply to any other tax on income or profits 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 :

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<sup>1</sup> Came into force on 1 April 1955, operative retroactively with respect to income or profits derived during taxable years beginning on or after 1 January 1955, by the exchange of the instruments of ratification at Tokyo, in accordance with article XX.

- (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 taxes referred to in paragraph (1) (b) of Article I are enforced.
- (c) The term "permanent establishment" means an office, factory, workshop, branch, warehouse or other fixed place of business, but does not include the casual and temporary use of merely storage facilities. It also includes an agency if the agent has and habitually exercises a general authority to negotiate and conclude contracts on behalf of an enterprise or has a stock of merchandise from which he regularly fills orders on its behalf. An enterprise of one of the contracting States shall not be deemed to have a permanent establishment in the other contracting State merely because it carried on business dealings in such other State through a *bona fide* commission agent, broker, custodian or other independent agent acting in the ordinary course of his business as such. The fact that an enterprise of one of the contracting States maintains in the other contracting State a fixed place of business exclusively for the purchase for such enterprise of goods or merchandise shall not of itself constitute such fixed place of business a permanent establishment of such enterprise. The fact that a corporation of one of the contracting States has a subsidiary corporation which is a corporation of the other contracting State or which is engaged in trade or business in the other contracting State shall not of itself constitute that subsidiary corporation a permanent establishment of its parent corporation.
- (d) The term "enterprise of one of the contracting States" means, as the case may be, United States enterprise or Japanese enterprise.
- (e) The term "United States enterprise" means an industrial or commercial enterprise or undertaking carried on in the United States by a resident (including an individual, a fiduciary and partnership) of the United States or by a United States corporation or other entity; and the term "United States corporation or other entity" means a corporation or other entity created or organized under the law of the United States or of any State or Territory of the United States.
- (f) The term "Japanese enterprise" means an industrial or commercial enterprise or undertaking carried on in Japan by an individual resident in Japan or by a Japanese corporation or other entity; and the term "Japanese corporation or other entity" means a corporation or other association having juridical

personality, or a partnership or other association without juridical personality, created or organized under the laws of Japan.

- (g) The term "tax" means those taxes referred to in paragraph (1) (a) or (b) of Article I, as the context requires.
- (h) 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.
- (i) The term "industrial or commercial profits" includes manufacturing, mercantile, agricultural, fishing, mining, financial and insurance profits, but does not include income in the form of dividends, interest, rents or royalties, or remuneration for personal services.

(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.

### *Article III*

(1) An enterprise of one of the contracting States shall not be subject to the tax of the other contracting State in respect of its industrial or commercial profits unless it has a permanent establishment situated in such other State. If it has such permanent establishment such other State may impose its tax upon the entire income of such enterprise from sources within such other State.

(2) In determining the tax of one of the contracting States no account shall be taken of the mere purchase of merchandise therein by an enterprise of the other contracting State.

(3) Where an enterprise of one of the contracting States has a permanent establishment situated in the other contracting State, there shall be attributed to such permanent establishment the industrial or commercial profits which it might be expected to derive if it were an independent enterprise engaged in the same or similar activities under the same or similar conditions and dealing on an independent basis with the enterprise of which it is a permanent establishment.

(4) In determining the industrial or commercial profits of a permanent establishment there shall be allowed as deductions all expenses wherever incurred, reasonably allocable to such permanent establishment, including executive and general administrative expenses so allocable.

(5) The competent authorities of both contracting States may, consistent with other provisions of the present Convention, arrange details for the apportionment of industrial or commercial profits.

#### *Article IV*

Where an enterprise of one of the contracting States, by reason of its participation in the management or the financial structure of an enterprise of the other contracting State, makes with or imposes on the latter enterprise, in their commercial or financial relations, conditions different from those which would be made with an independent enterprise, any profits which would normally have been allocable to one of the enterprises, but by reason of such conditions have not been so allocated, may be included in the profits of such enterprise and taxed accordingly.

#### *Article V*

(1) Notwithstanding the provisions of Article III and Article IV of the present Convention, income which an enterprise of one of the contracting States derives from the operation of ships or aircraft registered

(a) in such State, or

(b) in a third country which exempts (A) such enterprise and (B) an enterprise of the other contracting State, from its tax on earnings derived from the operation of ships or aircraft, as the case may be, registered in the respective States shall be exempt from the tax of such other contracting State.

(2) The present Convention shall not be construed to affect the arrangement between the Government of the United States and the Government of Japan providing for relief from double taxation on shipping profits effected by the exchange of notes at Washington dated March 31, 1926 and June 8, 1926.<sup>1</sup>

#### *Article VI*

The rate of tax imposed by one of the contracting States on interest on bonds, securities, notes, debentures or any other form of indebtedness (including mortgages or bonds secured by real property) received from sources within such State by a resident or corporation or other entity of the other contracting State not having a permanent establishment in the former State shall not exceed 15 percent.

#### *Article VII*

The rate of tax imposed by one of the contracting States on royalties and other amounts received as consideration for the right to use copyrights, artistic and scien-

<sup>1</sup> League of Nations, *Treaty Series*, Vol. CVIII, p. 463.

tific works, patents, designs, secret processes and formulae, trade-marks and other like property (including in such royalties and other amounts, rentals and like payments in respect of motion picture films or for the use of industrial, commercial, or scientific equipment) from sources within such State by a resident or corporation or other entity of the other contracting State not having a permanent establishment in the former State shall not exceed 15 percent.

#### *Article VIII*

A resident or corporation or other entity of one of the contracting States deriving

- (a) income from real property (including gains derived from the sale or exchange of such property, but not including interest from mortgages or bonds secured by real property), or
- (b) royalties in respect of the operation of mines, quarries or other natural resources

situated within the other contracting State may elect, for any taxable year, to be subject to the tax of such other State on a net basis as if such resident or corporation or other entity had a permanent establishment in such other State during such taxable year.

#### *Article IX*

An individual resident of one of the contracting States shall be exempt from the tax of the other contracting State upon compensation for labor or personal services (including the practice of liberal professions) performed in such other State in any taxable year if such resident is temporarily present in such other State :

- (a) for a period or periods not exceeding a total of 180 days during such taxable year and his compensation is received for such labor or personal services performed as an officer or employee of a resident or corporation or other entity of the former State, or
- (b) for a period or periods not exceeding a total of 90 days during such taxable year and his compensation received for such labor or personal services does not exceed 3,000 United States dollars, or the equivalent sum in yen as computed at the official basic rate of exchange in effect at the time such compensation is paid.

*Article X*

(1) (a) Salaries, wages and similar compensation paid by the United States to an individual who is a citizen of the United States (other than an individual who has been admitted to Japan for permanent residence therein) shall be exempt from tax by Japan.

(b) Salaries, wages and similar compensation paid by Japan to an individual who is a national of Japan (other than an individual who has been admitted to the United States for permanent residence therein) shall be exempt from tax by the United States.

(2) The provisions of this article shall not apply to salaries, wages or similar compensation paid in respect of services rendered in connection with any trade or business carried on by either of the contracting States for purposes of profit.

*Article XI*

A resident of one of the contracting States, who, in accordance with agreements between the Governments of the contracting States or between educational establishments in the contracting States for the exchange of professors and teachers, or at the invitation of the Government of the other contracting State or of an educational establishment in such other State, temporarily visits such other State for the purpose of teaching for a period not exceeding two years at a university, college, school or other educational institution in such other State, shall be exempt from the tax of such other State on his remuneration for such teaching for such period.

*Article XII*

(1) A resident of one of the contracting States who is temporarily present in the other contracting State solely as a student at a recognized university, college or school in such other State, shall be exempt from the tax of such other State with respect to remittances from abroad (including payments, if any, by his employer abroad).

(2) A resident of one of the contracting States who is a recipient of a grant, allowance or award from a religious, charitable, scientific, literary or educational organization of such State and who is temporarily present in the other contracting State, shall be exempt from the tax of such other State on such grant, allowance or award remitted from abroad (other than compensation for personal services).

(3) A resident of one of the contracting States who is an employee of, or under contract with, an enterprise of such State or an organization referred to in paragraph (2) of this Article, and who is temporarily present in the other contracting State for a period not exceeding one year solely to acquire technical, professional or

business experience from a person other than such enterprise or organization, shall be exempt from the tax of such other State on compensation from abroad paid by such enterprise or organization for his services rendered during such period, if the amount of compensation paid by such enterprise or organization for his services during such period, when computed on the annual basis, does not exceed 6,000 United States dollars, or the equivalent sum in yen as computed at the official basic rate of exchange in effect at the time such compensation is paid.

### *Article XIII*

For the purpose of the present Convention :

(a) Dividends paid by a corporation of one of the contracting States shall be treated as income from sources within such State.

(b) Interest paid by one of the contracting States including local Government thereof or by an enterprise of one of the contracting States not having a permanent establishment in the other contracting State shall be treated as income from sources within the former State.

(c) Gains, profits and income derived from the purchase and sale of personal property shall be treated as derived from the country in which such property is sold.

(d) Gains, profits and income derived from the sale by a taxpayer in one of the contracting States of goods manufactured in the other contracting State in whole or in part by such taxpayer shall be treated as derived in part from the country in which manufactured and in part from the country in which sold, and to the extent such gains, profits and income are not allocable under other provisions of the present Convention they shall be allocated between both contracting States in accordance with such taxpayer's relative sales and property in the respective countries.

(e) Income from real property (including gains derived from the sale or exchange of such property, but not including interest from mortgages or bonds secured by real property) and royalties in respect of the operation of mines, quarries, or other natural resources shall be treated as income derived from the country in which such real property, mines, quarries or other natural resources are situated.

(f) Compensation for labor or personal services (including the practice of liberal professions) shall be treated as income from sources within the country where are rendered the services for which such compensation is paid.

(g) Royalties for using, or for the right to use, in one of the contracting States, patents, copyrights, designs, trademarks and like property shall be treated as income from sources within such State.



*Article XIV*

It is agreed that double taxation shall be avoided in the following manner :

(a) The United States, in determining the tax of its citizens, residents or corporations or other entities may, regardless of any other provision of the present Convention, include in the basis upon which such tax is imposed all items of income taxable under the revenue laws of the United States as if the present Convention had not come into effect. The United States shall, however, subject to the provisions of section 131 of the Internal Revenue Code as in effect on the first day of January 1945,<sup>1</sup> deduct from its tax the amount of the tax of Japan. In determining the credit under the said section 131 of the Internal Revenue Code, any interest received from an enterprise of the United States with a permanent establishment in Japan shall be treated as income from sources within Japan to the extent so treated under the laws of Japan, if the debt with respect to which such interest is paid is made in connection with the business of such permanent establishment of such enterprise.

(b) Japan, in determining the tax of its residents or corporations or other entities may, regardless of any other provision of the present Convention, include in the basis upon which such tax is imposed all items of income taxable under the tax laws of Japan as if the present Convention had not come into effect. Japan shall, however, deduct from its tax so calculated the amount of the tax of the United States upon income from sources within the United States and included for the taxes of both contracting States, but in an amount not exceeding that proportion of the tax of Japan which such income bears to the entire income subject to the tax of Japan.

(c) In determining the taxes of the contracting States of a recipient, who is a citizen, resident or corporation or other entity of the United States, of a dividend from a Japanese corporation, in so far as the tax of Japan imposed on income or profits of a corporation out of which a dividend is paid is deemed under the tax laws of Japan to have been imposed on a recipient of such dividend :

- (i) The United States shall deem that such recipient has paid with respect to such dividend the tax of Japan in an amount equal to 25 percent of the amount of such dividend, and deduct, under the provisions of paragraph (a) of this Article, from its tax the amount of the tax of Japan so deemed to have been paid provided the recipient includes in gross income the amount of tax thus deemed to have been paid, and
- (ii) Japan shall impose with respect to such dividend received by such recipient (except as such recipient is a resident of or has a permanent establishment in Japan) no tax other than the tax imposed on income or profits of the corporation out of which such dividend is paid.

<sup>1</sup> United States of America : 53 Stat. 56 ; 26 U.S.C. §131 (changed, effective Jan. 1, 1954 to 26 U.S.C. §901).

*Article XV*

(1) Organizations organized under the laws of Japan and operated exclusively for religious, charitable, scientific, literary or educational purposes shall, to the extent and subject to conditions provided in the United States Internal Revenue Code, be exempt from the tax of the United States.

(2) Organizations organized under the laws of the United States and operated exclusively for religious, charitable, scientific, literary or educational purposes shall, to the extent and subject to conditions provided in the tax laws of Japan, be exempt from the tax of Japan.

*Article XVI*

(1) There shall be allowed, for the purposes of the tax of the United States, in the case of a resident of Japan who is a nonresident of the United States (other than an officer or employee of the Government of Japan), in addition to the exemption provided in section 214 of the United States Internal Revenue Code as in effect on the first day of January 1954,<sup>1</sup> a credit against net income, subject to the conditions prescribed in section 25 of the Internal Revenue Code as in effect on the said date,<sup>2</sup> for the spouse of the taxpayer and for each child of the taxpayer who are present in the United States and residing with him in the United States at any time during the taxable year, but such additional credit shall not exceed that proportion thereof which the taxpayer's gross income from sources within the United States for the taxpayer's taxable year bears to his entire income from all sources for the fiscal or calendar year in which ends such taxable year.

(2) For the purposes of the tax of Japan, there shall be allowed in the case of a citizen of the United States who is a resident of Japan the same exemptions for a dependent or dependents as those granted to a national of Japan who is a resident of Japan.

*Article XVII*

(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.

<sup>1</sup> United States of America : 53 Stat. 77 ; 26 U.S.C. §214 (changed, effective Jan. 1, 1954, to 26 U.S.C. § 873 (d)).

<sup>2</sup> United States of America : 53 Stat. 17 ; 26 U.S.C. § 25 (changed, effective Jan. 1, 1954, to 26 U.S.C. § 35).

(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 exemptions, reduced rates of tax 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 XVIII*

Where a taxpayer 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, he shall be entitled to present the facts to the competent authorities of the contracting State of which he is a national or a resident, or, if the taxpayer is a corporation or other entity, to those of the contracting State under the laws of which it is created or organized. Should the taxpayer's 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 XIX*

(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 to restrict in any manner any exemption, deduction, credit or other allowance now or hereafter accorded by the laws of one of the contracting States in determining the tax of such 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 XX*

(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 income or profits derived during the taxable years beginning on or after the first day of January of the calendar year in which such exchange takes place.

(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 present 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

## EXCHANGE OF NOTES

## I

*The Japanese Ambassador to the Acting Secretary of State*

EMBASSY OF JAPAN  
WASHINGTON, D. C.

April 16, 1954

Sir :

In proceeding today to the signature of the Convention between Japan and the United States of America for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income,<sup>1</sup> I have the honor to enclose herewith, for the purpose of future reference, a memorandum confirming an understanding in regard to the interpretation of certain provisions of that Convention. I shall appreciate receiving from you an acknowledgment and confirmation of this statement of the understanding.

Accept, Sir, the assurances of my highest consideration.

S. IGUCHI

Enclosure :

Memorandum.

The Honorable Walter Bedell Smith  
Acting Secretary of State  
Washington, D. C.

## MEMORANDUM

It is understood that in the application of Article XIV and Articles XI and XII of the Convention between Japan and the United States of America for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income

- (1) the provisions of Article XIV shall not be construed to deny the exemptions from the Japanese tax or the United States tax, as the case may be, granted by Article X (1), Article XI and Article XII ;
- (2) neither of the contracting States shall be precluded from taxing its own nationals or citizens with respect to income coming within Article XI or Article XII.

<sup>1</sup> See p. 70 of this volume.

## II

*The Acting Secretary of State to the Japanese Ambassador*

DEPARTMENT OF STATE  
WASHINGTON

April 16, 1954

Excellency :

I have the honor to acknowledge the receipt of your note dated today and to confirm the understanding, as set forth in the memorandum enclosed with that note, in regard to an interpretation of certain provisions of the Convention 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 Income, signed today.

Accept, Excellency, the assurances of my highest consideration.

Walter Bedell SMITH  
Acting Secretary of State

His Excellency Sadao Iguchi  
Ambassador of Japan