

No. 11392

**JAPAN
and
REPUBLIC OF KOREA**

Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income (with protocol and exchange of notes). Signed at Tokyo on 3 March 1970

Authentic text: English.

Registered by Japan on 4 November 1971.

**JAPON
et
RÉPUBLIQUE DE CORÉE**

Convention tendant à éviter la double imposition et à prévenir l'évasion fiscale en matière d'impôts sur le revenu (avec protocole et échange de notes). Signée à Tokyo le 3 mars 1970

Texte authentique : anglais.

Enregistrée par le Japon le 4 novembre 1971.

CONVENTION¹ BETWEEN JAPAN AND THE REPUBLIC OF
KOREA FOR THE AVOIDANCE OF DOUBLE TAXATION
AND THE PREVENTION OF FISCAL EVASION WITH
RESPECT TO TAXES ON INCOME

Japan and the Republic of Korea,

Desiring to conclude a Convention for the avoidance of double taxation
and the prevention of fiscal evasion with respect to taxes on income,

Have agreed as follows:

Article 1

(1) The taxes which are the subject of this Convention are:

- (a) In the Republic of Korea, the income tax and the corporation tax (hereinafter referred to as “Korean tax”).
- (b) In Japan, the income tax, the corporation tax and the local inhabitant taxes (hereinafter referred to as “Japanese tax”).

(2) This Convention shall also apply to taxes, whether national or local, substantially similar to those covered by paragraph (1) of this Article, which are imposed in addition to, or in place of, the existing taxes after the date of signature of this Convention.

Article 2

(1) In this Convention, unless the context otherwise requires:

- (a) the term “Korea” means the Republic of Korea;
- (b) the term “Japan”, when used in a geographical sense, means all the territory in which the laws relating to Japanese tax are in force;
- (c) the terms “a Contracting State” and “the other Contracting State” mean Japan or Korea, as the context requires;
- (d) the term “person” comprises an individual, a corporation and any other body of persons;

¹ Came into force on 29 October 1970, the thirtieth day after the date of the exchange of the instruments of ratification, which took place at Seoul on 29 September 1970, in accordance with article 25.

- (e) the term “corporation” means any body corporate or any entity treated as a body corporate for tax purposes;
- (f) the term “tax” means Japanese tax or Korean tax, as the context requires;
- (g) the term “competent authorities” means:
 - (i) in Korea, the Minister of Finance or his authorized representative;
 - (ii) in Japan, the Minister of Finance or his authorized representative.

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

Article 3

(1) For the purposes of this Convention, the term “resident of a Contracting State” means an individual who is a resident of that Contracting State for tax purposes of that Contracting State.

(2) For the purposes of this Convention, the term “corporation of a Contracting State” means a corporation which has its head or main office in that Contracting State.

(3) Where by reason of the provisions of paragraph (1) of this Article an individual is a resident of both Contracting States, then the competent authorities of both Contracting States shall determine by mutual agreement the Contracting State of which that individual shall be deemed to be a resident for the purposes of this Convention.

Article 4

(1) For the purposes of this Convention, the term “permanent establishment” means a fixed place of business in which a resident or corporation of a Contracting State wholly or partly carries on business.

- (2) The term “a fixed place of business” includes, but is not limited to:
- (a) an office;
 - (b) a store or other sales outlet;
 - (c) a factory;

- (d) a workshop;
- (e) a warehouse;
- (f) a mine, quarry or other place of extraction of natural resources;
- (g) a building site or construction, installation or assembly project which exists for more than six months.

(3) Notwithstanding the provisions of paragraph (1) of this Article, a permanent establishment shall not include a fixed place of business used only for one or more of the following activities:

- (a) processing by another person of goods or merchandise belonging to the resident or corporation;
- (b) mere purchase of goods or merchandise for the resident or corporation;
- (c) mere storage of goods or merchandise belonging to the resident or corporation;
- (d) collection of information for the resident or corporation;
- (e) advertising, the conduct of scientific research, the display of goods or merchandise, the supply of information or similar activities which have a preparatory or auxiliary character in the business of the resident or corporation.

(4) Even if a resident or corporation of a Contracting State does not have a permanent establishment in the other Contracting State under the provisions of paragraphs (1), (2) and (3) of this Article, it shall be deemed to have a permanent establishment in that other Contracting State if it:

- (a) engages in business in that other Contracting State through an agent who —
 - (i) has an authority to conclude contracts in the name of that resident or corporation and regularly exercises that authority in that other Contracting State, unless the exercise of the authority is limited to the purchase of goods or merchandise for the resident or corporation; or
 - (ii) regularly secures orders in that other Contracting State wholly or almost wholly for that resident or corporation or for that resident or corporation and other persons who are controlled by or have a controlling interest in that resident or corporation; or

(iii) maintains in that other Contracting State a stock of goods or merchandise belonging to that resident or corporation from which he regularly makes deliveries; or

(b) provides in that other Contracting State —

(i) personal service, such as supervisory, technical or any other professional service performed for more than six months in connection with a contract of a building, construction, installation or assembly project; or

(ii) the services of public entertainers referred to in paragraph (4) of Article 12.

(5) Notwithstanding the provisions of paragraph (4) of this Article, a resident or corporation of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it uses the services in that other Contracting State of a *bona fide* broker, general commission agent, forwarding agent, custodian or other agent of independent status acting in the ordinary course of his business.

(6) The fact that a corporation of a Contracting State controls or is controlled by (a) a corporation of the other Contracting State or (b) a corporation which carries on business in that other Contracting State (whether through a permanent establishment or otherwise) shall not of itself constitute for either corporation a permanent establishment of the other.

Article 5

(1) A resident or corporation of a Contracting State shall be taxable in the other Contracting State only on income derived from sources within that other Contracting State subject to the limitations set forth in this Convention.

(2) Any item of income to which the provisions of this Convention are not expressly applicable may be taxed in each of the Contracting States in accordance with its own laws.

(3) The provisions of this Convention shall not be construed to restrict in any manner any exclusion, exemption, deduction, credit or other allowance now or hereafter accorded by (a) the laws of a Contracting State or (b) any other agreement between the both Contracting States in the determination of the tax of that Contracting State.

(4) The laws in force in either Contracting State shall continue to govern the taxation of income in that either Contracting State except where provisions to the contrary are made in this Convention.

Article 6

(1) A resident or corporation of a Contracting State shall be exempt from tax in the other Contracting State with respect to its industrial or commercial profits if that resident or corporation has no permanent establishment in that other Contracting State.

(2) If a resident or corporation of a Contracting State has a permanent establishment in the other Contracting State, the permanent establishment may be taxed in that other Contracting State on the entire income of that resident or corporation from sources within that other Contracting State.

(3) In the determination of the industrial or commercial profits of a permanent establishment which a resident or corporation of a Contracting State has in the other Contracting State, there shall be allowed as deductions expenses, wherever incurred, which are reasonably connected with such profits, including executive and general administrative expenses.

(4) Notwithstanding the provisions of paragraph (5) of this Article, no profits shall be deemed to be derived from sources within a Contracting State in which a permanent establishment of a resident or corporation of the other Contracting State is located, by reason of mere purchase of goods or merchandise by that permanent establishment solely for that resident or corporation, or by that resident or corporation for itself.

(5) For the purposes of this Article, the industrial or commercial profits derived from the sale by a resident or corporation in a Contracting State of goods or merchandise purchased or manufactured in the other Contracting State by such resident or corporation shall be treated as income derived from sources in part within the Contracting State in which such goods or merchandise are purchased or manufactured and in part within the Contracting State in which such goods or merchandise are sold. The Governments or competent authorities of both Contracting States may, consistent with the principles of taxation laid down in this Article, consult and arrange details for the apportionment of sources of the industrial or commercial profits described above.

Article 7

(1) Notwithstanding the provisions of paragraph (2) of Article 6, income or revenue which a resident or corporation of a Contracting State derives from the operation in international traffic of ships or aircraft registered —

- (a) in either Contracting State, or
- (b) in any third country which exempts from its taxes on income or revenue derived by a resident or corporation of the other Contracting State from the operation of ships or aircraft registered in that other Contracting State

shall be exempt from tax in that other Contracting State.

(2) The provisions of paragraph (1) of this Article shall likewise apply in respect of participations in a pool, in a joint business or in an international operations agency of any kind by a resident or corporation of a Contracting State engaged in the operation of ships or aircraft in international traffic.

(3) For the purposes of paragraph (1) of this Article, the term “tax” includes the enterprise tax of Japan or the business tax of Korea, as the context requires.

(4) The arrangement made by the Notes exchanged at Seoul on April 1, 1969 between the Government of Japan and the Government of the Republic of Korea concerning reciprocal exemption from taxation of income or revenue derived from the operation of ships or aircraft shall cease to be effective as from the dates from which the provisions of this Convention are applicable.

Article 8

(1) Where a resident or corporation of a Contracting State deriving income in the other Contracting State is related to any other person and where such related persons make arrangements or impose conditions between themselves which are different from those which would be made between independent persons, then any income which would, but for those arrangements or conditions, have accrued to such resident or corporation but, by reason of those arrangements or conditions, has not so accrued, may be included in the income of such resident or corporation for the purposes of this Convention and taxed in that other Contracting State accordingly.

(2) A person is related to another person if (a) either person participates directly or indirectly in the management, control or capital of the other, or

(b) any third person or persons participate directly or indirectly in the management, control or capital of both.

Article 9

(1) The tax imposed in a Contracting State on dividends derived from sources within that Contracting State by a resident or corporation of the other Contracting State shall not exceed 12 per cent of the gross amount thereof.

(2) The provisions of paragraph (1) of this Article shall not apply if the recipient of the dividends, being a resident or corporation of a Contracting State, has in the other Contracting State in which the dividends arise a permanent establishment with which the holding by virtue of which the dividends are paid is effectively connected. In such a case, the provisions of Article 6 shall apply, as if they were industrial or commercial profits.

(3) Dividends paid by a corporation of a Contracting State shall be treated as income from sources within that Contracting State.

Article 10

(1) The tax imposed in a Contracting State on interest derived from sources within that Contracting State by a resident or corporation of the other Contracting State shall not exceed 12 per cent of the gross amount thereof.

(2) Notwithstanding the provisions of paragraph (1) of this Article, interest derived from sources within a Contracting State by the Government of the other Contracting State including local authorities thereof, the central bank of that other Contracting State, or any agency or instrumentality (including financial institution) wholly owned by that Government or that central bank or by both shall be exempt from tax in the first-mentioned Contracting State.

(3) The provisions of paragraph (1) of this Article shall not apply if the recipient of the interest, being a resident or corporation of a Contracting State, has in the other Contracting State in which the interest arises a permanent establishment with which the debt-claim from which the interest arises is effectively connected. In such a case, the provisions of Article 6 shall apply, as if it were industrial or commercial profits.

(4) Where any interest, paid by a person to any related person, as defined in Article 8, exceeds a fair and reasonable consideration in respect of

the indebtedness for which it is paid, the provisions of paragraph (1) of this Article shall apply only to so much of the interest as represents such fair and reasonable consideration; and the excess part of the payment shall be taxable according to the laws of each Contracting State and the provisions of this Convention where applicable.

(5) (a) Except as provided in subparagraph (b), interest paid by a Contracting State including any local authorities thereof or by a resident or corporation of that Contracting State shall be treated as income from sources within that Contracting State.

(b) Interest paid by a resident or corporation of a Contracting State with a permanent establishment in the other Contracting State or outside both Contracting States directly out of the funds of such permanent establishment on indebtedness incurred for the sole use of, or on banking deposits made with, such permanent establishment shall be treated as income from sources within the country in which such permanent establishment is located.

Article 11

(1) (a) The tax imposed in a Contracting State on royalties derived from sources within that Contracting State by a resident or corporation of the other Contracting State shall not exceed 12 per cent of the gross amount thereof.

(b) The tax imposed in a Contracting State on income derived from sources within that Contracting State from the alienation of the property, right or information referred to in paragraph (3) (a) and (b) of this Article by a resident or corporation of the other Contracting State shall not exceed 12 per cent of the gross amount thereof.

(2) The provisions of paragraph (1) of this Article shall not apply if the recipient of the royalties or income, being a resident or corporation of a Contracting State, has in the other Contracting State in which the royalties or income arise a permanent establishment with which the property, right or information giving rise to the royalties or income is effectively connected. In such a case, the provisions of Article 6 shall apply, as if the royalties or income were industrial or commercial profits.

(3) For the purposes of this Article, the term "royalties" means any royalties, rentals or other amounts paid as a consideration for the use of, or the right to use —

- (a) copyrights of literary, artistic or scientific works, motion picture films, films or tapes for radio or television broadcasting, patents, designs, models, plans, secret processes or formulae, trademarks, or other like property or rights, or

- (b) industrial, commercial or scientific equipment, or information concerning industrial, commercial or scientific knowledge, experience or skill, or

- (c) ships or aircraft leased under a bare boat charter contract.

(4) The provisions of paragraphs (1), (2) and (3) of this Article shall not apply to any royalties, rentals or other amounts paid in respect of the operation of mines, quarries or other places of extraction of natural resources.

(5) Where any royalties or income, paid by a person to any related person, as defined in Article 8, exceed a fair and reasonable consideration in respect of the property, right or information for which they are paid, the provisions of paragraph (1) of this Article shall apply only to so much of the royalties or income as represents such fair and reasonable consideration; and the excess part of the payment shall be taxable according to the laws of each Contracting State and the provisions of this Convention where applicable.

(6) Royalties paid for the use of, or the right to use, in a Contracting State, property, right or information described in paragraph (3) of this Article shall be treated as income from sources within that Contracting State. However, royalties from leasing ships or aircraft operated in international traffic shall be treated as income from sources within the Contracting State of which the lessee is a resident or corporation. Income from the alienation of property, right or information described in paragraph (3) (a) and (b) of this Article for use in a Contracting State shall be treated as income from sources within that Contracting State.

Article 12

(1) Subject to the provisions of Articles 13, 14, 15 and 16, remuneration received by a resident of a Contracting State for his personal services shall be

taxable only in that Contracting State unless such remuneration is derived from sources within the other Contracting State. If the remuneration is so derived, it may be taxed in that other Contracting State.

(2) (a) Income received by an individual for his performance of personal services (either as an employee or in an independent capacity) or for furnishing the personal services of other persons and income received by a corporation for furnishing the personal services of its employees or others shall be treated as income from sources within the Contracting State in which such services are performed.

(b) Notwithstanding the provisions of subparagraph (a) above, remuneration for personal services performed aboard ships or aircraft operated by a resident or corporation of a Contracting State shall be treated as income from sources within that Contracting State, if rendered by a member of the regular complement of the ships or aircraft.

(c) Notwithstanding the provisions of subparagraph (a) above, the remuneration received by an individual in his capacity as a member of the board of directors of a corporation shall be treated as income from sources within a Contracting State, if the corporation of which the individual is a director is a corporation of that Contracting State.

(3) Notwithstanding the provisions of paragraph (1) of this Article, a resident of a Contracting State shall be exempt from tax in the other Contracting State with respect to income from personal services rendered in the other Contracting State if —

- (a) (i) he is present within the other Contracting State for a period or periods not exceeding in the aggregate 183 days in the calendar year concerned, and
- (ii) the services are performed as an employee of a resident or corporation of the first-mentioned Contracting State, and
- (iii) the remuneration is not deducted as such in computing the profits of a resident or corporation of the first-mentioned Contracting State taxable in that other Contracting State; or
- (b) (i) he is present within the other Contracting State for a period or periods not exceeding in the aggregate 90 days in the calendar year concerned, and
- (ii) he performs professional services, and

- (iii) the remuneration received for such services does not exceed 3,000 United States dollars or its equivalent in Japanese Yen or Korean Won.

(4) Notwithstanding the provisions of paragraphs (1) and (3) of this Article, the income derived by public entertainers, such as theatre, motion picture, radio or television artistes, musicians and athletes, from their personal services as such shall be exempt from tax in the Contracting State in which the services are performed unless such income exceeds either 100 United States dollars or its equivalent in Japanese Yen or Korean Won for each day such person is present in that Contracting State or an aggregate amount of 3,000 United States dollars or its equivalent in Japanese Yen or Korean Won.

Article 13

(1) An individual who is a resident of a Contracting State at the beginning of his visit to the other Contracting State and who, at the invitation of the Government of that other Contracting State or of a university or other accredited educational institution situated in that other Contracting State, visits that other Contracting State for the primary purpose of teaching or engaging in research, or both, at a university or other accredited educational institution shall be exempt from tax in that other Contracting State on his income from such teaching or research for a period not exceeding two years from the date of his arrival in that other Contracting State.

(2) The provisions of this Article shall not apply to income from research if such research is undertaken primarily for the private benefit of a specific person or persons.

Article 14

(1) An individual who is a resident of a Contracting State at the beginning of his visit to the other Contracting State and who is temporarily present in that other Contracting State for the primary purpose of —

- (a) studying at a university or other accredited educational institution in that other Contracting State, or
- (b) securing training required to qualify him to practice a profession or a professional speciality, or
- (c) studying or doing research as a recipient of a grant, allowance or award from a governmental, religious, charitable, scientific, literary or educational organization,

shall be exempt from tax in that other Contracting State with respect to —

- (i) remittance from abroad for the purpose of his maintenance, education, study, research or training;
- (ii) the grant, allowance or award; and
- (iii) income from his personal services rendered in that other Contracting State in an amount not exceeding 1,800 United States dollars or its equivalent in Japanese Yen or Korean Won during any calendar year.

(2) The benefits under the provisions of paragraph (1) of this Article shall only extend for such period of time as may be reasonably or customarily required to effectuate the purpose of the visit, but in no event shall any individual have the benefits of the said paragraph for more than five consecutive years.

(3) An individual who is a resident of a Contracting State at the beginning of his visit to the other Contracting State and who is present in that other Contracting State for a period not exceeding one year, as an employee of, or under contract with, a resident or corporation of the first-mentioned Contracting State, for the primary purpose of acquiring technical, professional or business experience from a person other than that resident or corporation of the first-mentioned Contracting State shall be exempt from tax in that other Contracting State on the remuneration for such period for his personal services performed in connection with the acquisition of such experience, if the total of amount received from abroad and of amount paid in that other Contracting State does not exceed 5,000 United States dollars or its equivalent in Japanese Yen or Korean Won during any calendar year.

(4) An individual who is a resident of a Contracting State at the beginning of his visit to the other Contracting State and who is present in that other Contracting State for a period not exceeding one year, as a participant in a programme sponsored by the Government of that other Contracting State, for the primary purpose of training, research or study shall be exempt from tax in that other Contracting State on the remuneration for such period for his personal services performed in connection with such training, research or study, if the total of amount received from abroad and of amount paid in that other Contracting State does not exceed 5,000 United States dollars or its equivalent in Japanese Yen or Korean Won during any calendar year.

Article 15

Private pensions and private annuities paid to a resident of a Contracting State shall be taxable only in that Contracting State.

Article 16

(1) Salaries, wages, or similar compensation, and pensions or similar benefits paid by, or paid out of funds created by, the Government of Korea or local authorities thereof to any individual for personal services rendered to the Government of Korea or local authorities thereof in the discharge of governmental functions shall be exempt from Japanese tax, unless (a) the individual is a national of Japan or is admitted to Japan for permanent residence therein, or (b) the individual is admitted to stay in Japan under the law of Japan with regard to staying of a person who lost his Japanese nationality on April 28, 1952 in accordance with the provisions of the Treaty of Peace with Japan¹ and who has been staying in Japan continuously since September 2, 1945 or a date prior thereto (including the child of such person born in Japan during the period from September 3, 1945 to April 28, 1952).

(2) Salaries, wages, or similar compensation, and pensions or similar benefits paid by, or paid out of funds to which contributions are made by, the Government of Japan or local authorities thereof to any individual for personal services rendered to the Government of Japan or local authorities thereof in the discharge of governmental functions shall be exempt from Korean tax, unless (a) the individual is a national of Korea, or (b) the individual is admitted to stay in Korea under a status similar to permanent residence, under the Immigration Law of Korea.

(3) The provisions of this Article shall not apply to salaries, wages, or similar compensation, and pensions or similar benefits paid for personal services rendered in connection with a trade or business carried on by a Contracting State or local authorities thereof for the purposes of profits.

¹ United Nations, *Treaty Series*, vol. 136, p. 45.

Article 17

An individual who qualifies for benefits under more than one provision of Articles 12, 13, 14 and 16 may enjoy the benefits under the provision most favourable to him, but he shall not be entitled to the benefits of more than one provision in any taxable year or taxable period.

Article 18

Double taxation shall be avoided in the following manner:

(1) Korea shall allow to a resident or corporation of Korea as a credit against Korean tax the appropriate amount of tax paid or to be paid to Japan. Such appropriate amount shall be based upon the amount of tax paid or to be paid to Japan but shall not exceed that proportion of Korean tax which the income from sources within Japan bears to the entire income subject to Korean tax.

(2) Japan shall allow to a resident or corporation of Japan as a credit against Japanese tax the appropriate amount of tax payable to Korea in accordance with the provisions of the laws of Japan regarding the allowance of a credit against Japanese tax of tax payable in any country other than Japan.

(3) For the purposes of the credit referred to in paragraph (2) of this Article, there shall be deemed to have been paid by a tax-payer Korean tax which would have been paid:

- (a) if the Korean tax would not have been reduced in Korea in accordance with the provisions of paragraph (1) of Article 9, paragraph (1) of Article 10 and paragraph (1) of Article 11 of this Convention; or
- (b) if the Korean tax would not have been reduced or exempted in Korea in accordance with the special incentive measures designed to promote economic development in Korea, effective on the date of signature of this Convention or which may be introduced in future in laws relating to Korean tax in place of, or in addition to, the existing measures, provided that an agreement is made between the Governments of the Contracting States in respect of the scope of the benefit accorded to the taxpayer by the said measures.

Article 19

(1) A national 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 a resident or corporation 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 residents or corporations of that other Contracting State in the same circumstances.

This provision 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) A corporation of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents or corporations 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 corporations of the first-mentioned Contracting State are or may be subjected.

(4) In this Article the term "taxation" means national or local taxes of every kind.

Article 20

(1) The competent authorities of the Contracting States may communicate with each other directly for the purpose of giving effect to the provisions of this Convention.

(2) Should any difficulty or doubt arise as to the interpretation or application of this Convention, the competent authorities of the Contracting States shall endeavour to settle the question as quickly as possible by mutual agreement.

(3) The competent authorities of the Contracting States may, if necessary, also consult with each other in respect of the enterprise tax of Japan and the business tax of Korea.

Article 21

(1) The competent authorities of a Contracting State shall exchange such information with the competent authorities of the other Contracting State as is pertinent to carrying out the provisions of this Convention or preventing fraud or fiscal evasion in relation to the taxes which are the subject of this Convention.

(2) Any information so exchanged shall be treated as secret but may be disclosed to persons (including a court or administrative body) concerned with assessment, collection, enforcement or prosecution with respect to the taxes which are the subject of this Convention.

(3) The competent authorities of the Contracting State to which a request for information is made shall not exchange information if:

- (a) the information is not available under the tax laws and administrative procedures of that Contracting State; or
- (b) the information is such as which would disclose any trade, business, industrial or professional secret.

(4) The competent authorities of the Contracting States shall notify each other of any amendments of the laws relating to the taxes referred to in paragraph (1) of Article 1 and of the adoption of any taxes referred to in paragraph (2) of Article 1 by transmitting the texts of any amendments or new statutes, if any, at least once a year.

Article 22

(1) Each of the Contracting States shall endeavour to collect such taxes imposed in the other Contracting State as will ensure that any exemption or reduced rate of tax granted under this Convention in that other Contracting State shall not be enjoyed by persons not entitled to such benefits. The Contracting State making such collections shall be responsible to the other Contracting State for the sums thus collected.

(2) In no case shall the provisions of this Article be construed so as to impose upon either of the Contracting States the obligation to carry out administrative measures which are at variance with the regulations and practices of the Contracting State endeavouring to collect the tax or which would be contrary to the public policy of that Contracting State.

Article 23

A taxpayer shall be entitled to present his case to the competent authorities of the Contracting State of which he is a resident or corporation, if he considers that the action of the other Contracting State has resulted or will result for him in taxation contrary to the provisions of this Convention. Should the taxpayer's claim be considered to have merit by the competent authorities of the Contracting State to which the claim is made, the competent authorities shall endeavour to come to an agreement with the competent authorities of the other Contracting State with a view to the avoidance of taxation not in accordance with the provisions of this Convention.

Article 24

The provisions of this Convention shall not affect the fiscal privileges of diplomatic or consular officials under the general rules of international law or under the provisions of special agreements.

Article 25

(1) This Convention shall be ratified and the instruments of ratification shall be exchanged at Seoul 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 be applicable —

(a) in Korea:

as respects income or revenue derived during the taxable years, taxable periods or accounting periods beginning on or after the first day of January in the calendar year in which this Convention enters into force; and

(b) in Japan:

as respects income or revenue derived during the taxable years beginning on or after the first day of January in the calendar year in which this Convention enters into force.

Article 26

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

(a) in Korea:

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

(b) in Japan:

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

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

DONE in duplicate at Tokyo on this third day of March of the year one thousand nine hundred and seventy in the English language.

For Japan:

KIICHI AICHI

For the Republic
of Korea:

HU RAK LEE

PROTOCOL

At the signing of the Convention between Japan and the Republic of Korea for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, the undersigned have agreed as follows:

1. A resident or corporation of Japan shall be exempt from the business tax of the Republic of Korea on revenue derived from the supply of products or services contracted on or after the date of the entry into force of the aforementioned Convention in accordance with the provisions of paragraph 1 (a) or (b) of Article 1 of the Agreement on the Settlement of Problems concerning Property and Claims and on the Economic Cooperation between Japan and the Republic of Korea, signed at Tokyo on June 22, 1965.¹

2. A resident or corporation of Japan shall be exempt from the business tax of the Republic of Korea on revenue derived from transactions made under contracts, concluded on or before December 31, 1967 and falling under the capital goods inducement contracts as provided for in the Foreign Capital Inducement Law of the Republic of Korea.

3. This Protocol shall come into force on the date of the entry into force of the aforementioned Convention.

DONE in duplicate at Tokyo on this third day of March of the year one thousand nine hundred and seventy in the English language.

For Japan:

KIICHI AICHI

For the Republic
of Korea:

HU RAK LEE

¹ United Nations, *Treaty Series*, vol. 583, p. 173.

EXCHANGE OF NOTES

I a

Tokyo, March 3, 1970

Excellency,

I have the honour to refer to the Convention between Japan and the Republic of Korea for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income signed today at Tokyo, and to confirm the following understandings on behalf of the Government of Japan.

1. With reference to paragraph (3) of Article 6 of the Convention, the expenses to be allocable to a permanent establishment which a resident or corporation of a Contracting State has in the other Contracting State (hereinafter referred to as "the permanent establishment") in the determination of the industrial or commercial profits of the permanent establishment shall be computed in the following manner:

(1) The items of expenses subject to allocation

The items of expenses subject to the allocation to the permanent establishment shall be those of selling expenses and executive and general administrative expenses which are allowed as deductions under the provisions of the tax laws of the Contracting State in which the expenses are incurred.

(2) The amount of expenses subject to allocation

The amount of expenses subject to the allocation to the permanent establishment shall be that of the selling expenses and executive and general administrative expenses, as provided for in the preceding subparagraph, incurred by (a) the head or main office including branches making a sale to a person in that other Contracting State of the resident or corporation of the first-mentioned Contracting State having that permanent establishment (hereinafter referred to as "the head or main office") or (b) that permanent establishment, which is allowed as deductions according to the provisions of the tax laws of the Contracting State in which the expenses are incurred.

(3) The computation of the amount of allocable expenses

(a) The amount of expenses incurred by the head or main office which is allocable to the permanent establishment (hereinafter referred to as "the amount of allocable expenses of the head or main office") shall be that proportion of the amount of the expenses of the head or main office obtained in accordance with the provisions of subparagraphs (1) and (2) of this para-

graph which the gross receipts derived by the head or main office from the sales transactions, excluding non-taxable sales transactions, with a person in that other Contracting State bear to the entire gross receipts from the world-wide sales transactions by the head or main office.

(b) The amount of expenses, excluding tax, incurred by the permanent establishment which is allocable to itself (hereinafter referred to as “the amount of allocable expenses of the permanent establishment”) shall be that proportion of the amount of the expenses of the permanent establishment obtained in accordance with the provisions of subparagraphs (1) and (2) of this paragraph, excluding tax, which the gross amount of the transactions, excluding non-taxable transactions, with a person in that other Contracting State bears to the entire gross amount of the transactions with a person in that other Contracting State.

The amount of tax as expenses incurred by the permanent establishment which is allocable to itself (hereinafter referred to as “the amount of allocable tax of the permanent establishment”) shall be that proportion of the amount of tax obtained in accordance with the provisions of subparagraphs (1) and (2) of this paragraph which the gross amount of the transactions, excluding non-taxable transactions, with a person in that other Contracting State which or the profits of which are subject to tax bears to the entire gross amount of the transactions which or the profits of which are subject to tax.

(c) In subparagraph (3) (b), the term “tax” means the enterprise tax of Japan or the business tax of Korea, as the context requires.

2. With reference to paragraph (5) of Article 6 of the Convention, the apportionment of sources of the industrial or commercial profits shall be made in the following manner:

(1) The income from purchase and sale

As to the income derived by a resident or corporation of a Contracting State having the permanent establishment from the sale in the other Contracting State of goods or merchandise purchased in the first-mentioned Contracting State, the apportionment to that other Contracting State shall be made on the net income basis according to the ratio of allocation to that other Contracting State which shall be obtained by dividing the amount of allocable expenses of the permanent establishment and the amount of allocable tax of the permanent establishment by the total of (i) the amount of allocable expenses of the permanent establishment and the amount of allo-

cable tax of the permanent establishment and (ii) the amount of allocable expenses of the head or main office.

(2) The income from manufacturing and sale

As to the income derived by a resident or corporation of a Contracting State having the permanent establishment from the sale in the other Contracting State, such as exports of plants, of goods or merchandise manufactured in the first-mentioned Contracting State by the resident or corporation itself, the apportionment to that other Contracting State shall be made, if that income includes the profits derived from the manufacturing activities, on the net income basis according to the ratio of allocation to that other Contracting State which shall be obtained by dividing the amount of allocable expenses of the permanent establishment and the amount of allocable tax of the permanent establishment by the total of (i) the amount of allocable expenses of the permanent establishment and the amount of allocable tax of the permanent establishment, (ii) the amount of allocable expenses of the head or main office and (iii) the amount of manufacturing expenditure.

The amount of manufacturing expenditure referred to above shall be deemed to be 15 per cent of the amount of total manufacturing cost incurred by the resident or corporation in manufacturing such goods or merchandise.

As to the income derived by a resident or corporation of a Contracting State having the permanent establishment from the sale in that Contracting State of goods or merchandise manufactured in the other Contracting State by that resident or corporation itself, the apportionment to that other Contracting State shall be made on the net income basis according to the formula corresponding to the one mentioned in this subparagraph.

(3) The income from building, construction, installation or assembly

With respect to the income derived by a resident or corporation of a Contracting State having the permanent establishment from the building, construction, installation or assembly project carried on in the other Contracting State, the competent authorities of both Contracting States shall consult with each other taking into consideration the nature of such activities.

I have further the honour to request Your Excellency to be good enough to confirm the foregoing understandings on behalf of the Government of the Republic of Korea.

I avail myself of this opportunity to renew to Your Excellency the assurances of my highest consideration.

KIICHI AICHI

Minister for Foreign Affairs
of Japan

His Excellency Mr. Hu Rak Lee
Ambassador Extraordinary and Plenipotentiary
of the Republic of Korea to Japan

II *a*

Tokyo, March 3, 1970

Excellency,

I have the honour to acknowledge the receipt of Your Excellency's Note of today's date which reads as follows:

[*See note I a*]

I have further the honour to confirm the foregoing understandings on behalf of the Government of the Republic of Korea.

I avail myself of this opportunity to renew to Your Excellency the assurances of my highest consideration.

HU RAK LEE

Ambassador Extraordinary and Plenipotentiary
of the Republic of Korea
Tokyo

His Excellency Mr. Kiichi Aichi
Minister for Foreign Affairs of Japan

I *b*

Tokyo, March 3, 1970

Excellency,

I have the honour to refer to paragraph (3) (*b*) of Article 18 of the Convention between the Republic of Korea and Japan for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income signed today at Tokyo, and to propose, on behalf of the Government of the Republic of Korea, that the two Governments shall agree that

the measures set forth in the following Articles of the Foreign Capital Inducement Law, Law No 1802, 1966, of the Republic of Korea, effective on the date of signature of the aforementioned Convention are “the special incentive measures designed to promote economic development in Korea, effective on the date of signature of this Convention” referred to in the said paragraph:

- (i) *Article 15* (Exemption and Reduction of Taxes) — relating to exemption or reduction of income tax or corporation tax on the income of a foreign invested enterprise or foreign investor; and
- (ii) *Article 21* (Exemption and Reduction of Taxes) — relating to exemption or reduction of income tax or corporation tax on the income derived from a cash loan contract, a capital goods inducement contract or a technological inducement contract.

I have further the honour to propose that the present Note and Your Excellency’s reply confirming the acceptance by the Government of Japan of the above proposal shall be regarded as constituting an agreement between the two Governments under paragraph (3) (b) of Article 18 of the aforementioned Convention.

I avail myself of this opportunity to renew to Your Excellency the assurances of my highest consideration.

HU RAK LEE

Ambassador Extraordinary and Plenipotentiary
of the Republic of Korea
Tokyo

His Excellency Mr. Kiichi Aichi
Minister for Foreign Affairs of Japan

II b

Tokyo, March 3, 1970

Excellency,

I have the honour to acknowledge the receipt of Your Excellency’s Note of today’s date which reads as follows:

[See note I b]

I have further the honour to confirm that the Government of Japan accepts the proposal contained in Your Excellency's Note and to agree that the same and the present reply shall be regarded as constituting an agreement between the two Governments under paragraph (3) (b) of Article 18 of the aforementioned Convention.

I avail myself of this opportunity to renew to Your Excellency the assurances of my highest consideration.

KIUCHI AICHI

Minister for Foreign Affairs
of Japan

His Excellency Mr. Hu Rak Lee
Ambassador Extraordinary and Plenipotentiary
of the Republic of Korea to Japan