

No. 11843

**JAPAN
and
SWITZERLAND**

**Convention for the avoidance of double taxation with respect
to taxes on income (with exchange of notes). Signed at
Tokyo on 19 January 1971**

Authentic texts of Convention: Japanese, German and English.

Authentic text of exchange of notes: English.

Registered by Japan on 23 June 1972.

**JAPON
et
SUISSE**

**Convention tendant à éviter les doubles impositions en
matière d'impôts sur le revenu (avec échange de notes).
Signée à Tokyo le 19 janvier 1971**

Textes authentiques de la Convention : japonais, allemand et anglais.

Texte authentique de l'échange de notes : anglais.

Enregistrée par le Japon le 23 juin 1972.

CONVENTION¹ BETWEEN JAPAN AND SWITZERLAND FOR
THE AVOIDANCE OF DOUBLE TAXATION WITH RE-
SPECT TO TAXES ON INCOME

The Government of Japan and the Swiss Federal Council,
Desiring to conclude a convention for the avoidance of double taxation
with respect to taxes on income,

Have agreed as follows:

Article 1

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

Article 2

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

(a) in the case of Japan:

the income tax, the corporation tax and the local inhabitant taxes
(hereinafter referred to as "Japanese tax");

(b) in the case of Switzerland:

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

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

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

¹ Came into force on 26 December 1971, i.e. on the thirtieth day after the date of the exchange of the
instruments of ratification, which took place at Berne on 26 November 1971, in accordance with
article 27.

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

Article 3

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

(a) The term “Japan”, when used in a geographical sense, means all the territory in which the laws relating to Japanese tax are in force;

(b) The term “Switzerland” means the Swiss Confederation;

(c) The terms “a Contracting State” and “the other Contracting State” mean Japan or Switzerland, as the context requires;

(d) The term “tax” means Japanese tax or Swiss tax, as the context requires;

(e) The term “person” comprises an individual, a company and any other body of persons;

(f) The term “company” means any body corporate or any entity which is treated as a body corporate for tax purposes;

(g) The terms “enterprise of a Contracting State” and “enterprise of the other Contracting State” mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;

(h) The term “competent authority” means, in the case of Japan, the Minister of Finance or his authorized representative, and, in the case of Switzerland, the Director of the Federal Tax Administration or his authorised representative.

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

Article 4

1. For the purposes of this Convention, the term “resident of a Contracting State” means any person who, under the laws of that Contracting State, is liable to taxation therein by reason of his domicile, residence, place of head or main office, place of management or any other criterion of a similar nature, but the term does not include any person who is liable to tax

in that Contracting State only if he derives income from sources therein; and in the case of Switzerland, the term includes partnerships created or organised under Swiss law.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then the competent authorities 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.

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

Article 5

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

2. The term “permanent establishment” shall include especially:

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop;
- (f) a mine, quarry or other place of extraction of natural resources;
- (g) a building site or construction or assembly project which exists for more than twelve months.

3. The term “permanent establishment” shall not be deemed to include:

- (a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
- (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
- (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information, for the enterprise;

(e) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research or for similar activities which have a preparatory or auxiliary character, for the enterprise.

4. An enterprise of a Contracting State shall be deemed to have a permanent establishment in the other Contracting State if it carries on the supervisory activities in that other Contracting State for more than twelve months in connection with a building site or construction or assembly project which is being undertaken in that other Contracting State.

5. A person acting in a Contracting State on behalf of an enterprise of the other Contracting State—other than an agent of an independent status to whom paragraph 6 applies—shall be deemed to be a permanent establishment in the first-mentioned Contracting State if he has, and habitually exercises in that first-mentioned Contracting State, an authority to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise.

6. An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other Contracting State through a broker, general commission agent or any other agent of an independent status, where such persons are acting in the ordinary course of their business.

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

Article 6

1. Income from immovable property may be taxed in the Contracting State in which such property is situated.

2. The term “immovable property” shall be defined in accordance with the laws of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting immovable property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral

deposits, sources and other natural resources; ships and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property.

4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of professional services.

Article 7

1. The profits of an enterprise of a Contracting State shall be taxable only in that Contracting State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other Contracting State but only so much of them as is attributable to that permanent establishment.

2. Where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

3. In the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment including executive and general administrative expenses so incurred, whether in the Contracting State in which the permanent establishment is situated or elsewhere.

4. Insofar as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles laid down in this Article.

5. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

6. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

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

Article 8

1. Profits from the operation of ships or aircraft in international traffic carried on by an enterprise of a Contracting State shall be taxable only in that Contracting State.

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

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

Article 9

Where

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

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

Article 10

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other Contracting State.

2. However, such dividends may be taxed in the Contracting State of which the company paying the dividends is a resident, and according to the laws of that Contracting State, but the tax so charged shall not exceed:

- (a) 10 per cent of the gross amount of the dividends if the company receiving such dividends owns, during the period of six months immediately preceding the date when the dividends become payable, 25 per cent or more of the entire voting power in the company paying such dividends;
- (b) in all other cases, 15 per cent of the gross amount of the dividends.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. The term "dividends" as used in this Article means income from shares, "jouissance" shares or "jouissance" rights, founders' shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights assimilated to income from shares by the taxation laws of the Contracting State of which the company making the distribution is a resident.

4. The provisions of paragraphs 1 and 2 shall not apply if the recipient of the dividends, being a resident of a Contracting State, has in the other Contracting State, of which the company paying the dividends is a resident, 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 7 shall apply.

5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other Contracting State may not impose any tax on the dividends paid by the company to persons who are not residents of that other Contracting State, or subject the company's undistributed profits to a tax on undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in that other Contracting State.

Article 11

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other Contracting State.

2. However, such interest may be taxed in the Contracting State in which it arises, and according to the laws of that Contracting State, but the

tax so charged shall not exceed 10 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2,

- (a) interest arising in Japan and derived by a resident of Switzerland with respect to debt-claims guaranteed or insured or indirectly financed by Switzerland or any institution fully owned by Switzerland shall be exempt from Japanese tax; and
- (b) interest arising in Switzerland and derived by the Export-Import Bank of Japan, or a resident of Japan with respect to debt-claims guaranteed or indirectly financed by the Bank of Japan or the Export-Import Bank of Japan or with respect to debt-claims insured by the Government of Japan shall be exempt from Swiss tax.

4. The term "interest" as used in this Article means income from Government securities, bonds or debentures, whether or not secured by mortgage and whether or not carrying a right to participate in profits, and debt-claims of every kind as well as all other income assimilated to income from money lent by the taxation laws of the Contracting State in which the income arises.

5. The provisions of paragraphs 1 and 2 shall not apply if the recipient of the interest, being a resident 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 7 shall apply.

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

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

Article 12

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other Contracting State.

2. However, such royalties may be taxed in the Contracting State in which they arise, and according to the laws of that Contracting State, but the tax so charged shall not exceed 10 per cent of the gross amount of the royalties.

3. The term “royalties” as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films and films or tapes for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience.

4. The provisions of paragraphs 1 and 2 shall not apply if the recipient of the royalties, being a resident of a Contracting State, has in the other Contracting State in which the royalties arise a permanent establishment with which the right or property giving rise to the royalties is effectively connected. In such a case, the provisions of Article 7 shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is that Contracting State itself, a political subdivision, a local authority or a resident of that Contracting State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the obligation to pay the royalties was incurred, and such royalties are borne by such permanent establishment, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

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

Article 13

1. Gains from the alienation of immovable property, as defined in paragraph 2 of Article 6, may be taxed in the Contracting State in which such property is situated.

2. Gains from the alienation of any property (other than immovable property) forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of any property (other than immovable property) pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing professional services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such a fixed base, may be taxed in that other Contracting State. However, gains derived by a resident of a Contracting State from the alienation of ships or aircraft operated in international traffic and any property (other than immovable property) pertaining to the operation of such ships or aircraft shall be taxable only in that Contracting State.

3. Gains derived by a resident of a Contracting State from the alienation of any property other than those to which the provisions of paragraphs 1 and 2 apply shall be taxable only in that Contracting State.

Article 14

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

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

Article 15

1. Subject to the provisions of Articles 16, 18, 19 and 20, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that Contracting

State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other Contracting State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned Contracting State if:

- (a) the recipient is present in that other Contracting State for a period or periods not exceeding in the aggregate 183 days in the calendar year concerned, and
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of that other Contracting State, and
- (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in that other Contracting State.

3. Notwithstanding the preceding provisions of this Article, remuneration in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State may be taxed in that Contracting State.

Article 16

Remuneration derived by a resident of a Contracting State in his capacity as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other Contracting State.

Article 17

1. Notwithstanding the provisions of Articles 14 and 15, income derived by public entertainers, such as theatre, motion picture, radio or television artistes, and musicians, and by athletes, from their personal activities as such may be taxed in the Contracting State in which these activities are exercised.

2. Notwithstanding the provisions of Articles 5, 7 and 14, where the services of a public entertainer or an athlete mentioned in paragraph 1 are provided in a Contracting State by an enterprise of the other Contracting State, the profits derived from providing those services by such enterprise may be taxed in the first-mentioned Contracting State if the public enter-

tainer or the athlete performing the services controls, directly or indirectly, such enterprise.

Article 18

Subject to the provisions of paragraph 1 of Article 19, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that Contracting State.

Article 19

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

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

Article 20

A professor or teacher who makes a temporary visit to a Contracting State for a period not exceeding two years for the purpose of teaching or conducting research at a university, college, school or other educational institution, and who is, or before such visit was, a resident of the other Contracting State, shall be exempt from tax of the first-mentioned Contracting State in respect of remuneration for such teaching or research.

Article 21

Payments received for the purpose of his maintenance, education or training by a student or business apprentice who is present in a Contracting State solely for the purpose of his education or training, and who is, or before being so present was, a resident of the other Contracting State, shall be exempt from tax of the first-mentioned Contracting State, provided that

such payments are made to him from outside that first-mentioned Contracting State.

Article 22

Items of income of a resident of a Contracting State which are not expressly mentioned in the foregoing Articles of this Convention shall be taxable only in that Contracting State.

Article 23

1. Subject to the present provisions of the laws of Japan regarding the allowance as a credit against Japanese tax of tax payable in any country other than Japan and to any subsequent modification of those provisions—which, however, shall not affect the principle hereof—Swiss tax payable, whether directly or by deduction, in respect of income arising in Switzerland shall be allowed as a credit against the Japanese tax payable in respect of that income. Where such income is a dividend paid by a company which is a resident of Switzerland to a company which is a resident of Japan and which owns not less than 25 per cent either of the voting shares of the company paying the dividend or of the total shares issued by that company, the credit shall take into account the Swiss tax payable by the first-mentioned company in respect of its profits.

2. Where a resident of Switzerland derives income which, in accordance with the provisions of this Convention, may be taxed in Japan, Switzerland shall, subject to the provisions of paragraph 3, exempt such income from tax but may, in calculating tax on the remaining income of that resident, apply the rate of tax which would have been applicable if the exempted income had not been so exempted.

3. Where a resident of Switzerland derives dividends, interest or royalties which, in accordance with the provisions of Article 10, 11 or 12, may be taxed in Japan, Switzerland shall allow, upon request, a relief to such resident. The relief may consist of:

- (a) a deduction from the tax on the income of that resident of an amount equal to the tax levied in Japan in accordance with the provisions of Articles 10, 11 and 12; such deduction shall not, however, exceed that part of the Swiss income tax, as computed before the deduction is given, which is appropriate to the income which may be taxed in Japan, or
- (b) a lump sum reduction of the Swiss tax determined by standardised formulae which have regard to the general principles of the relief referred to in subparagraph (a) above, or

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

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

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

Article 24

1. The nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other Contracting State in the same circumstances are or may be subjected.

2. The term "nationals" means:

- (a) in respect of Japan: all individuals possessing the nationality of Japan and all juridical persons created or organised under the laws of Japan and all organisations without juridical personality treated for the purposes of Japanese tax as juridical persons created or organised under the laws of Japan;
- (b) in respect of Switzerland: all Swiss citizens and all legal persons, partnerships and associations deriving their status as such from the laws in force in Switzerland.

3. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other Contracting State than the taxation levied on enterprises of that other Contracting State carrying on the same activities.

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.

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

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

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

Article 25

1. Where a resident of a Contracting State considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with this Convention, he may, notwithstanding the remedies provided by the laws of those Contracting States, present his case to the competent authority of the Contracting State of which he is a resident.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at an appropriate solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation not in accordance with this Convention.

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Convention. They may also consult together for the elimination of double taxation in cases not provided for in this Convention.

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

Article 26

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

Article 27

1. This Convention shall be ratified and the instruments of ratification shall be exchanged at Berne as soon as possible.

2. This Convention shall enter into force on the thirtieth day after the date of the exchange of instruments of ratification and shall have effect:

(a) in Japan:

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

(b) in Switzerland:

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

Article 28

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

(a) in Japan:

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

(b) in Switzerland:

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

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

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

For the Government
of Japan:

KIICHI AICHI

For the Swiss
Federal Council:

EMIL STADELHOFER

EXCHANGE OF NOTES

I

Tokyo, January 19, 1971

Excellency,

I have the honour to refer to the Convention between Japan and Switzerland for the Avoidance of Double Taxation with respect to Taxes on Income which was signed today and to confirm, on behalf of the Government of Japan, the following understandings reached between the two Governments:

1. It is understood that, under the provisions of Article 72 of the Local Tax Law (Law No. 226 of 1950), the enterprise tax of Japan is not levied on a foreign enterprise unless such enterprise has in Japan a permanent establishment within the meaning of the Convention.

2. With reference to paragraph 2 of Article 4 of the Convention, it is agreed that the determination by mutual agreement of the status of an individual who is a resident of both Contracting States shall take into consideration the rules as set out in paragraph 2 of Article 4 of the Draft Double Taxation Convention on Income and Capital of the Organisation for Economic Cooperation and Development.

3. With reference to paragraph 3 of Article 5 of the Convention, it is agreed that a permanent establishment shall not include a fixed place of business used only for one or more of the activities mentioned in subparagraphs (a) to (e) of paragraph 3 of the said Article.

4. With reference to sub-paragraph (a) of paragraph 2 of Article 10 of the Convention, it is agreed that the two Governments will undertake to review the said provisions if the difference between the Japanese tax rates on companies' distributed profits and those on undistributed profits is reduced to 5 per cent or less.

5. With reference to paragraph 2 of Article 10, paragraph 2 of Article 11 and paragraph 2 of Article 12 of the Convention, it is agreed that if Japan, in a convention with any other State, being a member of the Organisation for Economic Cooperation and Development, would limit its taxation at the source on interest, on royalties or on dividends distributed by a company to a company which owns 25 per cent or more of the entire voting power in the company paying the dividends to lower rates than those provided for in the said provisions, the two Governments will immediately undertake to review the said provisions in order to provide the same treatment.

6. With reference to Articles 12 and 13 of the Convention, it is agreed that the term "royalties" includes a lump sum payment received as a consideration for the use of, or the right to use, the right or property mentioned in paragraph 3 of Article 12 but the gains derived from the genuine alienation of such right or property shall be governed by the provisions of Article 13.

7. It is understood that Switzerland has taken by Decree of the Swiss Federal Council of December 14, 1962, measures against the improper use of double taxation conventions which will also apply to the Convention. It is further agreed that if in future taxation at source on interest and royalties is reduced to rates substantially below those provided for in the Convention, the two Governments will undertake to review if special provisions against the improper use of the Convention are needed.

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

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

KIICHI AICHI
Minister for Foreign Affairs of Japan

His Excellency Dr. Emil A. Stadelhofer
Ambassador Extraordinary and Plenipotentiary of Switzerland

II

Tokyo, January 19, 1971

Excellency,

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

[*See note I*]

I have further the honour to confirm the understandings contained in Your Excellency's Note, on behalf of the Swiss Federal Council.

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

EMIL STADELHOFER
Ambassador Extraordinary and Plenipotentiary
of Switzerland

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