

PROTOCOL
AMENDING THE CONVENTION
BETWEEN JAPAN
AND THE GRAND-DUCHY OF LUXEMBOURG
FOR THE AVOIDANCE OF DOUBLE TAXATION
AND THE PREVENTION OF FISCAL EVASION
WITH RESPECT TO TAXES ON INCOME
AND/OR TO A CERTAIN OTHER TAX

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The Government of Japan and the Government of the Grand-Duchy of Luxembourg,

Desiring to amend the Convention between Japan and the Grand-Duchy of Luxembourg for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and/or to a certain other tax, signed at Luxembourg on 5 March 1992 (hereinafter referred to as "the Convention"),

Have agreed as follows:

ARTICLE I

Paragraph 4 of Article 11 of the Convention shall be deleted and replaced by the following:

"4. For the purposes of paragraph 3, the terms "the Central Bank" and "financial institution wholly owned by the Government" mean:

- (a) in the case of Luxembourg:
 - (i) the Central Bank of Luxembourg;
 - (ii) the National Credit and Investment Corporation (la Société Nationale de Crédit et d'Investissement); and
 - (iii) such other financial institution the capital of which is wholly owned by the Government of Luxembourg as may be agreed upon from time to time between the Governments of two Contracting States;

- (b) in the case of Japan:
 - (i) the Bank of Japan;
 - (ii) the Japan Finance Corporation;
 - (iii) the Japan International Cooperation Agency;
 - (iv) the Nippon Export and Investment Insurance; and
 - (v) such other financial institution the capital of which is wholly owned by the Government of Japan as may be agreed upon from time to time between the Governments of two Contracting States."

ARTICLE II

Article 28 of the Convention shall be deleted and replaced by the following:

"Article 28

1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Convention or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States or of their local authorities, insofar as the taxation thereunder is not contrary to this Convention. The exchange of information is not restricted by Articles 1 and 2.

2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that Contracting State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation:

- (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
- (b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
- (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy.

4. If information is requested by a Contracting State in accordance with the provisions of this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other Contracting State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.

5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person."

ARTICLE III

1. This Protocol shall be approved in accordance with the legal procedures of each of the Contracting States and shall enter into force on the thirtieth day after the date of exchange of diplomatic notes indicating such approval.

2. This Protocol shall be applicable for taxes levied on or after the date on which the Protocol enters into force.

3. This Protocol shall remain in effect as long as the Convention remains in force.

IN WITNESS WHEREOF the undersigned, duly authorised thereto by their respective Governments, have signed this Protocol.

DONE in duplicate at Luxembourg on this twenty-fifth day of January, 2010, in the English language.

For the Government of
Japan:

末綱隆

For the Government of
the Grand-Duchy
of Luxembourg:

Luc Frieden