

(Japanese Note)

Translation

London, February 2, 2006

Excellency:

I have the honour to refer to the Convention between Japan and the United Kingdom of Great Britain and Northern Ireland for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital Gains which was signed today (hereinafter referred to as "the Convention") and to the Protocol also signed today which forms an integral part of the Convention, and to make, on behalf of the Government of Japan, the following proposals:

1. With reference to subparagraph (m) of paragraph 1 of Article 3 of the Convention:

It is understood that the term "pension fund or pension scheme" includes the following and any identical or substantially similar funds or schemes which are established pursuant to legislation introduced after the date of signature of the Convention:

(a) funds or schemes established as the pension or retirement benefits systems implemented under the following laws in Japan:

- (i) National Pension Law (Law No. 141 of 1959);
- (ii) Employees' Pension Insurance Law (Law No. 115 of 1954);
- (iii) The Law Concerning Mutual Aid Association for National Public Officials (Law No. 128 of 1958);
- (iv) The Law Concerning Mutual Aid Association for Local Public Officials and Personnel of Similar Status (Law No. 152 of 1962);
- (v) The Law Concerning Mutual Aid for Private School Personnel (Law No. 245 of 1953);

The Rt. Hon. Dawn Primarolo, MP  
Paymaster General

- (vi) Coal-Mining Pension Fund Law (Law No. 135 of 1967);
- (vii) Defined-Benefit Corporate Pension Law (Law No. 50 of 2001);
- (viii) Defined-Contribution Pension Law (Law No. 88 of 2001);
- (ix) Farmers' Pension Fund Law (Law No. 127 of 2002);
- (x) Corporate Tax Law (Law No. 34 of 1965);
- (xi) Small and Medium Enterprises Retirement Allowance Mutual Aid Law (Law No. 160 of 1959);
- (xii) Small Enterprise Mutual Relief Projects Law (Law No. 102 of 1965); and
- (xiii) Cabinet Order of Income Tax Law (Cabinet Order No. 96 of 1965); and

(b) under the laws of the United Kingdom, employment related arrangements (other than a social security scheme) approved as retirement benefit schemes for the purpose of Chapter I of Part XIV of the Income and Corporation Taxes Act 1988, personal pension schemes approved under Chapter IV of Part XIV of that Act and schemes approved under Part 4 of the Finance Act 2004.

It is further understood that the term "pension fund or pension scheme" includes, in the case of Japan, investment funds or trusts where all of the interest of the funds or trusts are held by pension funds or pension schemes, and in the case of the United Kingdom, pension funds or pension schemes arranged through insurance companies and unit trusts where the unit holders are exclusively pension funds or pension schemes.

2. With reference to paragraphs 2 and 3 of Article 10 of the Convention:

It is understood that, in the case of Japan, the date on which entitlement to the dividends is determined is the end of the accounting period for which the distribution of profits takes place.

3. With reference to Articles 10, 11 and 12 of the Convention:

It is understood that trustees or managers of investment funds established in a Contracting State may submit a claim relating to the benefits afforded by the provisions of those Articles. The admission of any claim in whole or in part by the other Contracting State may be made subject to such conditions as that other Contracting State thinks proper to impose. The competent authorities may consult with a view to resolving difficulties which occur if such conditions are imposed. Investment funds include, in the case of Japan, an investment trust as defined in paragraphs 3 and 28 of Article 2 of the Investment Trust and Investment Corporation Law (Law No. 198 of 1951), a loan trust as defined in paragraph 1 of Article 2 of the Loan Trust Law (Law No. 195 of 1952), a jointly operated trust as defined in subparagraph 11 of paragraph 1 of Article 2 of the Income Tax Law (Law No. 33 of 1965) and a Special Purpose Trust as defined in paragraph 13 of Article 2 of the Liquidation of Assets Law (Law No. 105 of 1998).

4. With reference to paragraph 8 of Article 11 and paragraph 4 of Article 12 of the Convention:

It is understood that these paragraphs do not, of themselves, permit Contracting States to recharacterise interest or royalties as a different type of income.

5. With reference to paragraph 3 of Article 13 of the Convention:

It is understood that gains are to be regarded as subject to tax if they are subject to tax in the same way as other gains derived from the disposal of shares by a resident of a Contracting State.

It is further understood that where, in the case of schemes of reorganisation of companies, the laws of a Contracting State allow for the taxation of the gains arising from the disposal of shares in a company to be deferred, such gains will be regarded as subject to tax unless any part of the deferred gains is as a result of a later disposal or reorganisation subject to a statutory exemption under the laws of that Contracting State.

6. With reference to Article 19 of the Convention:

It is understood that a payment will be considered to arise from sources outside a Contracting State if the payer is located outside that Contracting State. It is further understood that, where appropriate, substance prevails over form in determining the identity of the payer.

If the foregoing understanding is acceptable to the Government of the United Kingdom of Great Britain and Northern Ireland, I have the honour to suggest that the present note and Your Excellency's reply to that effect should be regarded as constituting an agreement between the two Governments in this matter, which shall enter into force at the same time as the Convention.

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

Yoshiji Nogami  
Ambassador Extraordinary  
and Plenipotentiary of Japan  
to the United Kingdom of  
Great Britain and Northern Ireland

(U.K. Note)

London, February 2, 2006

Excellency:

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

"(Japanese Note)"

The foregoing proposal being acceptable to the Government of the United Kingdom of Great Britain and Northern Ireland, I have the honour to confirm that Your Excellency's Note and this reply shall be regarded as constituting an agreement between the two Governments in this matter, which shall enter into force at the same time as the entry into force of the Convention.

I take this opportunity to extend to Your Excellency the assurance of my highest consideration.

Dawn Primarolo  
Paymaster General

His Excellency  
Mr. Yoshiji Nogami  
Ambassador Extraordinary  
and Plenipotentiary of Japan  
to the United Kingdom of  
Great Britain and Northern Ireland