

AGREEMENT BETWEEN
THE GOVERNMENT OF JAPAN AND THE GOVERNMENT OF BERMUDA
FOR THE EXCHANGE OF INFORMATION
FOR THE PURPOSE OF THE PREVENTION OF FISCAL EVASION
AND THE ALLOCATION OF RIGHTS OF TAXATION
WITH RESPECT TO INCOME OF INDIVIDUALS

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The Government of Japan and the Government of Bermuda, the Government of Bermuda having been duly authorised by the Government of the United Kingdom of Great Britain and Northern Ireland,

Desiring to conclude an Agreement for the exchange of information for the purpose of the prevention of fiscal evasion and the allocation of rights of taxation with respect to income of individuals,

Have agreed as follows:

Chapter 1
GENERAL PROVISIONS

Article 1
GENERAL DEFINITIONS

1. For the purposes of this Agreement, unless the context otherwise requires:

- (a) the term "Japan", when used in a geographical sense, means all the territory of Japan, including its territorial sea, in which the laws relating to Japanese tax are in force, and all the area beyond its territorial sea, including the seabed and subsoil thereof, over which Japan has sovereign rights in accordance with international law and in which the laws relating to Japanese tax are in force;
- (b) the term "Bermuda" means the Islands of Bermuda;
- (c) the term "Contracting Party" means Japan or Bermuda as the context requires;
- (d) the term "person" includes an individual, a company and any other body of persons;
- (e) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;
- (f) the term "national" means:

- (i) in the case of Japan, any individual possessing the nationality of Japan, any juridical person created or organised under the laws of Japan and any organisation without juridical personality treated for the purposes of Japanese tax as a juridical person created or organised under the laws of Japan; and
- (ii) in the case of Bermuda, any legal person, partnership, company, trust, estate, association or any other entity, deriving its status as such from the laws in force in Bermuda;

Note: For the purposes of subparagraph (ii), the term "legal person" is understood to mean an individual who is a national of Bermuda.

- (g) the term "competent authority" means, in the case of Japan, the Minister of Finance or an authorised representative of the Minister and, in the case of Bermuda, the Minister of Finance or an authorised representative of the Minister;
- (h) the term "Applicant Party" means the Contracting Party requesting information;
- (i) the term "Requested Party" means the Contracting Party requested to provide information;
- (j) the term "information gathering measures" means laws and administrative or judicial procedures that enable a Contracting Party to obtain and provide the information requested;
- (k) the term "information" means any fact, statement or record in any form whatever;
- (l) the term "publicly traded company" means any company whose principal class of shares is listed on a recognized stock exchange provided its listed shares can be purchased or sold by the public;
- (m) the term "principal class of shares" means the class or classes of shares representing a majority of the voting power and value of a company; and
- (n) the term "recognised stock exchange" means:

- (i) any stock exchange established by a Financial Instruments Exchange or an approved-type financial instruments firms association under the Financial Instruments and Exchange Law (Law No. 25 of 1948) of Japan;
- (ii) the Bermuda Stock Exchange; and
- (iii) any other stock exchange agreed upon by the competent authorities of the Contracting Parties.

2. As regards the application of this Agreement at any time by a Contracting Party, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the laws of that Contracting Party for the purposes of the taxes to which the Agreement applies, any meaning under the applicable tax laws of that Contracting Party prevailing over a meaning given to the term under other laws of that Contracting Party.

Chapter 2 EXCHANGE OF INFORMATION

Article 2 OBJECT AND SCOPE

The competent authorities of the Contracting Parties shall provide assistance through exchange of information that is relevant for the carrying out of this Agreement or to the administration or enforcement of the laws of the Contracting Parties concerning taxes referred to in Article 4. Such information shall include information that is relevant to the determination, assessment and collection of such taxes, the recovery and enforcement of tax claims, or the investigation or prosecution of tax matters. Information shall be exchanged in accordance with the Agreement and shall be treated as confidential in the manner provided in Article 8.

Article 3 JURISDICTION

The Requested Party is not obligated to provide information which is neither held by its authorities nor in the possession or control of persons who are within its territorial jurisdiction.

Article 4
TAXES COVERED

1. This Chapter shall apply to taxes on income imposed on behalf of a Contracting Party or a political subdivision or local authority thereof, irrespective of the manner in which they are levied.
2. In the case of Japan, the existing taxes on income to which this Chapter shall apply are the income tax, the corporation tax and the local inhabitant taxes.
3. In addition to the taxes as referred to in paragraphs 1 and 2, this Chapter shall apply also to the inheritance tax and the gift tax, which are levied in Japan.
4. This Chapter shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of this Agreement in addition to, or in place of, those referred to in paragraphs 2 and 3.
5. The competent authorities of the Contracting Parties shall notify each other of any significant changes that have been made in their respective tax laws, within a reasonable period of time after such changes.

Article 5
EXCHANGE OF INFORMATION UPON REQUEST

1. The competent authority of the Requested Party shall provide upon request information for the purposes referred to in Article 2.
2. If the information in the possession of the competent authority of the Requested Party is not sufficient to enable it to comply with the request for information, the Requested Party shall use all relevant information gathering measures to provide the Applicant Party with the information requested, notwithstanding that the Requested Party may not need such information for its own tax purposes.
3. If specifically requested by the competent authority of the Applicant Party, the competent authority of the Requested Party shall provide information under this Article, to the extent allowable under its laws, in the form of authenticated copies of original records.
4. Each Contracting Party shall ensure that its competent authority for the purposes specified in Article 2, have the authority to obtain and provide upon request:

- (a) information held by banks, other financial institutions, and any person acting in an agency or fiduciary capacity including nominees and trustees; and
- (b) information regarding the ownership of companies, partnerships and other persons, including, within the constraints of Article 3, ownership information on all such persons in an ownership chain; in the case of trusts, information on settlors, trustees and beneficiaries and the position in an ownership chain.

5. This Agreement does not create an obligation on the Requested Party to obtain or provide:

- (a) information regarding:
 - (i) the ownership of publicly traded companies; or
 - (ii) the ownership of the units, shares or other interests in trusts or any persons other than publicly traded companies, which can be purchased or sold by the public;unless such information is obtainable without giving rise to disproportionate difficulties; or
- (b) information relating to matters which arose more than six years before the taxable period concerned.

6. Where the Applicant Party requests information in accordance with this Agreement, the competent authority of the Applicant Party shall certify that the request is relevant to, and necessary for, the determination of the tax liability of the taxpayer under the laws of the Applicant Party.

7. The competent authority of the Applicant Party shall provide the following information to the competent authority of the Requested Party when making a request for information under this Agreement to demonstrate the relevance of the information sought to the request:

- (a) the identity of the taxpayer under examination;
- (b) the nature and type of the information requested, including a description of the specific information or other assistance sought and the form, if practicable, in which the Applicant Party prefers to receive the information;

- (c) the tax purposes for which the information requested is sought and the reason why such information is relevant to, and necessary for, the determination of the tax liability of the taxpayer under the laws of the Applicant Party;
- (d) the period of time with respect to which the information requested is required for the tax purposes;
- (e) grounds for believing that the information requested is held by the Requested Party or is in the possession or control of a person who is within the territorial jurisdiction of the Requested Party;
- (f) to the extent known, the name and address of any person believed to be in possession or control of the information requested;
- (g) a statement that the request conforms to the laws and administrative practices of the Applicant Party and the information requested would be obtainable by the Applicant Party under its laws in similar circumstances, whether for its own tax purposes or in response to a valid request under the Agreement; and
- (h) a statement that the Applicant Party has pursued all means available within its territorial jurisdiction to obtain the information requested, except those that would give rise to disproportionate difficulties.

8. The competent authority of the Requested Party shall forward the information requested as promptly as possible to the Applicant Party. To ensure a prompt response, the competent authority of the Requested Party shall:

- (a) confirm receipt of a request in writing to the competent authority of the Applicant Party and shall notify the competent authority of the Applicant Party of deficiencies in the request, if any, within sixty days of the receipt of the request; and

- (b) if the competent authority of the Requested Party has been unable to obtain and provide the information within ninety days of the receipt of the request, including if it encounters obstacles in furnishing the information or it refuses to furnish the information, immediately inform the Applicant Party, explaining the reason for its inability, the nature of the obstacles or the reasons for its refusal.

Article 6
TAX EXAMINATIONS ABROAD

1. At the request of the competent authority of the Applicant Party, the competent authority of the Requested Party may allow representatives of the competent authority of the Applicant Party to be present at the appropriate part of a tax examination in the Requested Party.
2. If the request referred to in paragraph 1 is acceded to, the competent authority of the Requested Party conducting the examination shall, as soon as possible, notify the competent authority of the Applicant Party about the time and place of the examination, the authority or official designated to carry out the examination and the procedures and conditions required by the Requested Party for the conduct of the examination. All decisions with respect to the conduct of the tax examination shall be made by the Requested Party conducting the examination.

Article 7
POSSIBILITY OF DECLINING A REQUEST

1. The competent authority of the Requested Party may decline to assist where:
 - (a) the request of the Applicant Party is not made in conformity with this Agreement;
 - (b) the Applicant Party has not pursued all means available within its territorial jurisdiction to obtain the information requested, except where recourse to such means would give rise to disproportionate difficulties;
 - (c) the disclosure of the information requested would be contrary to the public policy of the Requested Party;
 - (d) the Applicant Party requests information in the possession or control of a person other than the taxpayer under examination, that does not directly relate to the taxpayer; or

- (e) the Applicant Party would not be able to obtain the information under its laws in similar circumstances;
 - (i) for the purposes of administration or enforcement of its own tax laws; or
 - (ii) in response to a valid request under this Agreement.

2. This Agreement shall not impose on a Contracting Party the obligation to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process. Notwithstanding the foregoing sentence, information of the type referred to in paragraph 4 of Article 5 shall not be treated as such a secret or trade process merely because it meets the criteria in that paragraph.

3. A request for information shall not be refused on the ground that the tax claim giving rise to the request is disputed.

4. The Requested Party may decline a request for information if the information is requested by the Applicant Party to administer or enforce any provision of the tax laws of the Applicant Party, or any requirement connected therewith, which discriminates against a national of the Requested Party as compared with a national of the Applicant Party in the same circumstances.

Article 8 CONFIDENTIALITY

Any information received by a Contracting Party under this Agreement shall be treated as confidential and may be disclosed only to persons or authorities (including courts and administrative bodies) in the Contracting Party concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes referred to in Article 4. Such persons or authorities shall use such information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. The information may not be disclosed to any other person or authority, including those in non-Contracting Parties, without the express written consent of the Requested Party.

Article 9
SAFEGUARDS

The procedural rights and safeguards secured to persons by the laws or administrative practices of the Requested Party remain applicable, when the Requested Party obtains and provides information under this Agreement. The rights and safeguards may not be applied by the Requested Party in a manner that unduly prevents or delays effective exchange of information.

Article 10
COSTS

Incidence of costs incurred in providing assistance shall be agreed by the competent authorities of the Contracting Parties.

Chapter 3
ALLOCATION OF RIGHTS OF TAXATION

Article 11
PERSONS COVERED

This Chapter shall apply to individuals who are residents of one or both of the Contracting Parties.

Article 12
TAXES COVERED

1. This Chapter shall apply to taxes on income imposed on behalf of a Contracting Party or a political subdivision or local authority thereof, irrespective of the manner in which they are levied.
2. In the case of Japan, the existing taxes to which this Chapter shall apply are the income tax and the local inhabitant taxes.
3. This Chapter shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of this Agreement in addition to, or in place of, those referred to in paragraph 2.
4. The competent authorities of the Contracting Parties shall notify each other of any significant changes that have been made in their respective tax laws, within a reasonable period of time after such changes.

Article 13
RESIDENT

1. For the purposes of this Chapter, the term "resident of a Contracting Party" means:

- (a) in the case of Japan, any individual who, under the laws of Japan, is liable to tax therein by reason of his domicile, residence or any other criterion of a similar nature except any individual who is liable to tax in Japan in respect only of income from sources in Japan; and
- (b) in the case of Bermuda, any individual who, under the laws of Bermuda, is ordinarily resident in Bermuda.

2. Where by reason of paragraph 1 an individual is a resident of both Contracting Parties, then his status shall be determined as follows:

- (a) he shall be deemed to be a resident only of the Contracting Party in which he has a permanent home available to him; if he has a permanent home available to him in both Contracting Parties, he shall be deemed to be a resident only of the Contracting Party with which his personal and economic relations are closer (centre of vital interests);
- (b) if the Contracting Party in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either Contracting Party, he shall be deemed to be a resident only of the Contracting Party in which he has an habitual abode;
- (c) if he has an habitual abode in both Contracting Parties or in neither of them, he shall be deemed to be a resident only of the Contracting Party of which he is a national;
- (d) if he is a national of both Contracting Parties or of neither of them, the competent authorities of the Contracting Parties shall settle the question by mutual agreement.

Article 14
PENSIONS

Subject to paragraph 2 of Article 15, pensions and other similar remuneration beneficially owned by a resident of a Contracting Party shall be taxable only in that Contracting Party.

Article 15
GOVERNMENT SERVICE

1. (a) Salaries, wages and other similar remuneration paid by a Contracting Party or a political subdivision or local authority thereof to an individual in respect of services rendered to that Contracting Party or political subdivision or local authority, in the discharge of functions of a governmental nature, shall be taxable only in that Contracting Party.
- (b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting Party if the services are rendered in that other Contracting Party and the individual is a resident of that other Contracting Party who:
 - (i) is a national of that other Contracting Party; or
 - (ii) did not become a resident of that other Contracting Party solely for the purpose of rendering the services.
2. (a) Notwithstanding paragraph 1, pensions and other similar remuneration paid by, or out of funds to which contributions are made or created by, a Contracting Party or a political subdivision or local authority thereof to an individual in respect of services rendered to that Contracting Party or political subdivision or local authority shall be taxable only in that Contracting Party.
- (b) However, such pensions and other similar remuneration shall be taxable only in the other Contracting Party if the individual is a resident of, and a national of, that other Contracting Party.

3. Paragraphs 1 and 2 shall not apply to salaries, wages, pensions, and other similar remuneration in respect of services rendered in connection with a business carried on by a Contracting Party or a political subdivision or local authority thereof.

Article 16 STUDENTS

Payments which a student or business apprentice who is or was immediately before visiting a Contracting Party a resident of the other Contracting Party and who is present in the first-mentioned Contracting Party solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in the first-mentioned Contracting Party, provided that such payments arise from sources outside the first-mentioned Contracting Party. The exemption provided by this Article shall apply to a business apprentice only for a period not exceeding two years from the date on which he first begins his training in the first-mentioned Contracting Party.

Chapter 4 SPECIAL PROVISIONS

Article 17 MUTUAL AGREEMENT PROCEDURES

1. Where a person considers that the actions of one or both of the Contracting Parties result or will result for him in taxation not in accordance with Chapter 3, he may, irrespective of the remedies provided by the laws of those Contracting Parties, present his case to the competent authority of the Contracting Party of which he is a resident. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with that Chapter.

2. The competent authority of a Contracting Party shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting Party, with a view to the avoidance of taxation which is not in accordance with Chapter 3. Any agreement reached shall be implemented notwithstanding any time limits in the laws of the Contracting Parties.

3. The competent authorities of the Contracting Parties shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Agreement.

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

Article 18

PROHIBITION OF PREJUDICIAL OR RESTRICTIVE TAXATION MEASURES

1. Neither Contracting Party shall apply more prejudicial or restrictive taxation measures to nationals or residents of the other Contracting Party than those applied to nationals of the first-mentioned Contracting Party in the same circumstances, in particular with respect to residence.

2. For the purposes of paragraph 1, the term "prejudicial or restrictive taxation measure":

- (a) includes the denial of a deduction, credit or exemption, and the imposition of a tax, charge or levy, or special reporting requirements; and
- (b) does not include any generally applicable measures by a Contracting Party.

Chapter 5

FINAL PROVISIONS

Article 19

HEADINGS

The headings of the Chapters and the Articles of this Agreement are inserted for convenience of reference only and shall not affect the interpretation of the Agreement.

Article 20

ENTRY INTO FORCE

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

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

3. Notwithstanding paragraph 2, Chapter 3 shall be applicable:

- (a) with respect to taxes withheld at source, for amounts taxable on or after 1 January in the calendar year next following that in which this Agreement enters into force; and

- (b) with respect to taxes on income which are not withheld at source, as regards income for any taxable year beginning on or after 1 January in the calendar year next following that in which this Agreement enters into force.

Article 21
TERMINATION

This Agreement shall remain in force until terminated by a Contracting Party. Either Contracting Party may terminate the Agreement, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year beginning after the expiry of five years from the date of entry into force of the Agreement. In such event, the Agreement shall cease to have effect:

- (a) with respect to taxes withheld at source, for amounts taxable on or after 1 January in the calendar year next following that in which the notice is given; and
- (b) with respect to taxes on income which are not withheld at source, as regards income for any taxable year beginning on or after 1 January in the calendar year next following that in which the notice is given.

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

DONE in duplicate at London this first day of February, 2010, in the Japanese and English languages, each text being equally authentic.

For the Government
of Japan:

草賀純男

For the Government
of Bermuda:

Paula Cox

PROTOCOL

At the signing of the Agreement between the Government of Japan and the Government of Bermuda for the exchange of information for the purpose of the prevention of fiscal evasion and the allocation of rights of taxation with respect to income of individuals (hereinafter referred to as "the Agreement"), the Government of Japan and the Government of Bermuda, the Government of Bermuda having been duly authorised by the Government of the United Kingdom of Great Britain and Northern Ireland, have agreed upon the following provisions, which shall form an integral part of the Agreement.

1. With reference to subparagraph (l) of paragraph 1 of Article 1 and subparagraph (a) of paragraph 5 of Article 5 of the Agreement, it is understood that shares, units or other interests referred to in those subparagraphs are regarded as purchased or sold by the public, if the purchase or sale of the shares, units or other interests are not implicitly or explicitly restricted to a limited group of investors.

2. With reference to Article 2 of the Agreement, it is understood that the relevance of the information requested for the carrying out of the Agreement or to the administration or enforcement of the laws of the Contracting Parties concerning taxes referred to in Article 4 of the Agreement shall be determined in a manner that ensures that the information will be considered to be relevant, even if a definite assessment of the relevance could only be made following the receipt of the information.

3. With reference to subparagraph (h) of paragraph 7 of Article 5 and subparagraph (b) of paragraph 1 of Article 7 of the Agreement, it is understood that the term "all means available within its territorial jurisdiction" includes the Applicant Party using information exchange mechanisms it has in force with non-Contracting Parties to the Agreement in which the information requested is located.

4. With reference to paragraph 2 of Article 7 of the Agreement, it is understood that the term "professional secret" includes information relating to communications between attorneys, solicitors or other admitted legal representatives in their role as such and their clients to the extent that the communications are protected from disclosure under the laws of each Contracting Party.

5. With reference to subparagraph (b) of paragraph 1 of Article 13 of the Agreement, it is understood that the term "any individual who, under the laws of Bermuda, is ordinarily resident in Bermuda" includes any person who normally resides in Bermuda and who regards Bermuda as his habitual abode.

6. With reference to paragraph 1 of Article 18 of the Agreement, it is understood that the term "resident" means, in the case of an individual, a resident referred to in Article 13 of the Agreement and, in the case of a person other than an individual:

- (a) in the case of Japan, any person who, under the laws of Japan, is liable to tax therein by reason of its place of head or main office or any other criterion of a similar nature; and
- (b) in the case of Bermuda, any partnership, company, trust, estate, association or any other entity, deriving its status as such from the laws in force in Bermuda.

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

DONE in duplicate at London this first day of February, 2010, in the Japanese and English languages, each text being equally authentic.

For the Government
of Japan:

草賀純男

For the Government
of Bermuda:

Paula Cox