

No. 47196

**Australia
and
Japan**

Convention between Australia and Japan for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income (with exchange of notes and protocol). Tokyo, 31 January 2008

Entry into force: *3 December 2008 by notification, in accordance with article 31*

Authentic texts: *English and Japanese*

Registration with the Secretariat of the United Nations: *Australia, 19 February 2010*

**Australie
et
Japon**

Convention entre l'Australie et le Japon tendant à éviter la double imposition et à prévenir l'évasion fiscale en matière d'impôts sur le revenu (avec échange de notes et protocole). Tokyo, 31 janvier 2008

Entrée en vigueur : *3 décembre 2008 par notification, conformément à l'article 31*

Textes authentiques : *anglais et japonais*

Enregistrement auprès du Secrétariat des Nations Unies : *Australie, 19 février 2010*

[ENGLISH TEXT – TEXTE ANGLAIS]

**CONVENTION BETWEEN AUSTRALIA AND JAPAN FOR THE AVOIDANCE OF
DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH
RESPECT TO TAXES ON INCOME**

Australia and Japan,

Desiring to conclude a new 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

PERSONS COVERED

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

Article 2

TAXES COVERED

1. This Convention shall apply to the following existing taxes:
 - a) in the case of Japan:
 - (i) the income tax; and
 - (ii) the corporation tax(hereinafter referred to as "Japanese tax");
 - b) in the case of Australia:
 - (i) the income tax; and
 - (ii) the petroleum resource rent tax(hereinafter referred to as "Australian tax").
2. This Convention shall apply also to any identical or substantially similar taxes that are imposed by Japan or under the federal law of Australia after the date of signature of the Convention in addition to, or in place of, the existing taxes referred to in paragraph 1. The competent authorities of the Contracting States shall notify each other of any significant changes that have been made in the law of their respective Contracting States relating to the

taxes to which the Convention applies within a reasonable period of time after such changes.

Article 3

GENERAL DEFINITIONS

1. For the purposes of this Convention, 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 "Australia", when used in a geographical sense, excludes all external territories other than:

(i) the Territory of Norfolk Island;

(ii) the Territory of Christmas Island;

(iii) the Territory of Cocos (Keeling) Islands;

(iv) the Territory of Ashmore and Cartier Islands;

(v) the Territory of Heard Island and McDonald Islands; and

(vi) the Coral Sea Islands Territory,

and includes any area adjacent to the territorial limits of Australia (including only the Territories specified in this subparagraph) in respect of which there is for the time being in force, consistently with international law, a law of Australia dealing with the exploration for or exploitation of any of the natural resources of the exclusive economic zone and the seabed and subsoil of the continental shelf;

c) the terms "a Contracting State" and "the other Contracting State" mean Japan or Australia, as the context requires;

d) the term "tax" means Japanese tax or Australian tax, as the context requires;

e) the term "person" includes an individual, a company and any other body of persons;

f) the term "company" means any body corporate or any entity that is treated as a company or body corporate for tax purposes;

g) the term "enterprise" applies to the carrying on of any business;

h) 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;

- i)* the term "international traffic" means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
- j)* the term "national", in relation to a Contracting State, means:
 - (i)* any individual possessing the nationality or citizenship of that Contracting State; and
 - (ii)* any juridical or legal person created or organised under the law of that Contracting State and any organisation without juridical or legal personality treated for the purposes of that Contracting State's tax as a juridical or legal person created or organised under the law of that Contracting State;
- k)* the term "competent authority" means:
 - (i)* in the case of Japan, the Minister of Finance or an authorised representative of the Minister of Finance; and
 - (ii)* in the case of Australia, the Commissioner of Taxation or an authorised representative of the Commissioner of Taxation; and
- l)* the term "business" includes the performance of professional services and of other activities of an independent character.

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

Article 4

RESIDENT

1. For the purposes of this Convention, the term "resident of a Contracting State" means:
- a)* in the case of Japan, any person who, under the laws of Japan, is liable to tax therein by reason of the person's domicile, residence, place of head or main office, or any other criterion of a similar nature; and
 - b)* in the case of Australia, a person who is a resident of Australia for the purposes of Australian tax.

The Government of a Contracting State or a political subdivision or local authority thereof is

also a resident of that Contracting State for the purposes of the Convention. A person is not a resident of a Contracting State for the purposes of the Convention if the person is liable to tax in that Contracting State in respect only of income from sources in that Contracting State.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then the individual's status shall be determined as follows:

- a) the individual shall be deemed to be a resident only of the Contracting State in which the individual has a permanent home available to that individual; if that individual has a permanent home available to that individual in both Contracting States, or in neither of them, that individual shall be deemed to be a resident only of the Contracting State with which the individual's personal and economic relations are closer (centre of vital interests);
- b) if the Contracting State in which the individual's centre of vital interests is situated cannot be determined, the individual shall be deemed to be a resident only of the Contracting State of which that individual is a national;
- c) if the individual is a national of both Contracting States or of neither of them, the competent authorities of the Contracting States shall endeavour to resolve the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then the competent authorities of the Contracting States shall endeavour to determine by mutual agreement the Contracting State of which that person shall be deemed to be a resident for the purposes of this Convention, having regard to the place of its head or main office, its place of effective management and any other relevant factors.

4. In the absence of a mutual agreement under subparagraph c) of paragraph 2 or paragraph 3 a person who is a resident of both Contracting States by reason of the provisions of paragraph 1 shall not be considered a resident of either Contracting State for the purposes of claiming any benefits provided by this Convention, except those provided by Articles 26 and 27.

5. For the purposes of applying this Convention:

- a) an item of income, profits or gains:
 - (i) derived from a Contracting State through an entity that is organised in the other Contracting State; and
 - (ii) treated as the income, profits or gains of the beneficiaries, members or participants of that entity under the tax law of that other Contracting State,

shall be eligible for the benefits of the Convention that would be granted if it were directly derived by a beneficiary, member or participant of that entity who is a resident of that other Contracting State, to the extent that such beneficiaries, members