

Implementing Arrangement regarding Paragraphs 5, 6 and 7 of Article 24 of the Convention between Japan and Sweden for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income

The competent authorities of Japan and Sweden have established this mode of application of the arbitration process provided for in paragraphs 5, 6 and 7 of Article 24 of the Convention between Japan and Sweden for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income signed at Stockholm on 21 January 1983, as amended by the Protocol signed at Stockholm on 19 February 1999 and the Protocol signed at Stockholm on 5 December 2013 (hereinafter referred to as “the Convention”).

This arrangement does not constitute a legally binding agreement. The competent authorities will follow the procedures in the arrangement in good faith. The competent authorities may modify or supplement the arrangement on a case by case basis taking into account the facts and circumstances of each individual case.

1. Request for submission of case to arbitration

A request for arbitration pursuant to paragraph 5 of Article 24 of the Convention (hereinafter referred to as a “request for arbitration”) will be made in writing and sent to the competent authority referred to in paragraph 1 of that Article through:

- a) (in the case of Japan): Office of Mutual Agreement Procedures, National Tax Agency; or
- b) (in the case of Sweden): Office of the Competent Authority, Swedish Tax Agency.

The request will contain sufficient information to identify the case. The request will also be accompanied by a written statement by the person who made the request that no decision on the same issues has already been rendered by a court or administrative tribunal of either Contracting State.

Within 10 days after the receipt of the request, the competent authority which received it will send a copy of the request and the accompanying statements to the other competent authority.

2. Time for submission of the case to arbitration

A case presented to the competent authority of a Contracting State under paragraph 1 of Article 24 of the Convention will be considered to have been presented to the competent authority of the other Contracting State only if the following information has been presented to the competent authorities of both Contracting States:

- a) the full name and address of the person who presented the case to the competent authority;
- b) the full name and address of any other person directly affected by the case;
- c) the taxable years concerned;
- d) the nature and date of the actions giving rise to the taxation not in accordance with the provisions of the Convention and the related amounts in the currencies of both Contracting States;
- e) the following information provided by the person who presented the case to the competent authority with a copy of any supporting documents:
 - i) an explanation of why the person considers that there is taxation not in accordance with the provisions of the Convention;
 - ii) the relationship, situation or structure of the transactions and related parties involved; and
 - iii) a copy of documents issued by the tax authority with regard to the taxation not in accordance with the Convention;
- f) a statement indicating whether the person directly affected by the case has filed a notice of objection, notice of appeal, or comparable documentation in either of the Contracting

- States; and
- g) any specific additional information requested by the competent authority referred to in paragraph 1 of Article 24 of the Convention within 90 days after the receipt of the request for a mutual agreement procedure under that paragraph.

The competent authorities will confirm to each other the date on which all of the information referred to in this paragraph was presented.

3. Terms of Reference

Within 90 days after the request for arbitration has been received by both competent authorities, the competent authorities will decide on the issues to be resolved by the arbitration panel. This will constitute the “Terms of Reference” for the case. The competent authorities may communicate the Terms of Reference to the person who made the request for arbitration.

Notwithstanding the following paragraphs of this arrangement, the competent authorities may also, in the Terms of Reference, provide procedural rules that are additional to, or different from, those included in these paragraphs and deal with such other matters as are deemed appropriate.

4. Failure to decide the Terms of Reference

If the competent authorities have not decided the Terms of Reference within the period referred to in paragraph 3, each competent authority may, within 30 days after the end of that period, communicate in writing to the other competent authority a list of issues to be resolved by the arbitration. The lists so communicated during that period will constitute the tentative Terms of Reference.

Within 30 days after all the arbitrators have been appointed as provided in paragraph 5, the arbitrators will communicate to the competent authorities a revised version of the tentative Terms of Reference based on the lists so communicated.

Within 30 days after the revised version has been received by both competent authorities, they will have the possibility to decide on different Terms of Reference and to communicate them in writing to the arbitrators. If they do so within that period, these different Terms of Reference will constitute the Terms of Reference for the case.

If no different Terms of Reference have been decided on by the competent authorities and communicated in writing within that period, the revised version of the tentative Terms of Reference prepared by the arbitrators will constitute the Terms of Reference for the case.

The competent authorities may communicate all the lists and the Terms of Reference referred to in this paragraph to the person who made the request for arbitration.

5. Selection of arbitrators

Within 90 days after the Terms of Reference have been decided by the competent authorities or, where paragraph 4 applies, within 120 days after the request for arbitration has been received by both competent authorities, the competent authorities will each appoint one arbitrator who may be its national.

Within 60 days after the latter appointment, the arbitrators so appointed will appoint a third arbitrator who will function as the chair of the arbitration panel.

If the appointment of the third arbitrator is not made within the required time period, each competent authority will, unless the competent authorities have decided otherwise, propose up to three candidates within 10 days after the end of that period. The arbitrators already appointed will appoint a third arbitrator, who will function as the chair of the arbitration panel, from among the candidates so proposed within 10 days after the receipt of the lists of candidates.

The same procedure will apply with the necessary adaptations if for any reason it is necessary to replace an arbitrator after the arbitration process has begun.

Each competent authority will determine the remuneration of its appointed arbitrator. The mode of remuneration for the third arbitrator will be decided on by the competent authorities before the appointment of the third arbitrator.

6. Failure to provide information in a timely manner and suspension of a mutual agreement procedure

Notwithstanding paragraph 5, where the failure to resolve an issue within the three-year period referred to in paragraph 5 of Article 24 of the Convention is mainly attributable to the failure of the person directly affected by the case to provide relevant information in a timely manner, the competent authorities may postpone the appointment of the arbitrators for a period of time corresponding to the delay in providing that information.

7. Procedural and evidentiary rules

Subject to this arrangement and the Terms of Reference, the arbitrators may adopt those procedural and evidentiary rules that they deem necessary to resolve the issues set out in the Terms of Reference.

If the person who presented the case to the competent authority is not fully compliant in providing the information necessary for the mutual agreement procedure, the competent authorities may decide that the case is not suitable for resolution through arbitration in accordance with the provisions of subparagraph (b) of paragraph 7 of Article 24 of the Convention.

8. Participation of the person who requested the arbitration

The person who made the request for arbitration may present his position to the arbitrators in writing to the same extent that he can do so during the mutual agreement procedure.

In addition, with the permission of the arbitrators, the person may present his position orally during the arbitration proceedings.

9. Logistical arrangements

Unless decided otherwise by the competent authorities, the competent authority of the Contracting State that issued the first tax assessment notice, i.e. final decision of the tax administration on the additional income, or equivalent, which results in taxation not in accordance with the provisions of the Convention, will be responsible for the logistical arrangements for the meetings of the arbitration panel and will provide the administrative personnel necessary for the conduct of the arbitration process. The administrative personnel so provided will report only to the chair of the arbitration panel concerning any matter related to that process.

10. Costs

The term “other expenses associated with the conduct of the proceedings” in (v) of subparagraph (b) of paragraph 6 of Article 24 of the Convention does not include indirect costs incurred for logistical arrangements under paragraph 9.

The person who made the request for arbitration will bear the costs related to his own participation in the arbitration proceedings (including travel costs and costs related to the preparation and presentation of his views).

11. Applicable legal principles

The arbitrators will decide the issues submitted to arbitration in accordance with the applicable provisions of the Convention.

Issues of interpretation of the Convention will be decided by the arbitrators in light of the principles of interpretation incorporated in Articles 31 to 33 of the Vienna Convention on the Law of Treaties, having regard to the Commentaries of the OECD Model Tax Convention as periodically amended, as explained in paragraphs 28 to 36.1 of the Introduction to the OECD Model Tax Convention. Issues related to the application of the arm's length principle should similarly be decided having regard to the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations.

The arbitrators will also consider any other sources which the competent authorities may expressly identify in the Terms of Reference.

12. Arbitration decision

The arbitration decision will be determined by a simple majority of the arbitrators.

The decision of the arbitration panel will be presented in writing and, where the competent authorities so decide, will indicate the sources of law relied upon and the reasoning which led to its result.

In accordance with the provisions of (i) of subparagraph (d) of paragraph 6 of Article 24 of the Convention, the decision of the arbitration panel has no formal precedential value. The decision will not be made public unless the person who made the request for arbitration and both competent authorities agree in writing on the form and contents of the publication.

13. Time allowed for communicating the arbitration decision

The arbitration decision will be communicated to the competent authorities within 180 days after the date on which the chair of the arbitration panel notifies in writing the competent authorities that he has received all the information necessary to begin consideration of the case.

Notwithstanding the first part of this paragraph, if at any time within 60 days or, where the appointment of the third arbitrator was not made within 60 days after the latter appointment of the first two arbitrators, 40 days, after the date on which the last arbitrator was appointed, the chair of the arbitration panel, with the consent of one of the competent authorities, notifies in writing the other competent authority that he has not received all the information necessary to begin consideration of the case, then:

- a) if the chair of the arbitration panel receives the necessary information within 60 days after the date on which that notice was sent, the arbitration decision will be communicated to the competent authorities within 180 days after the date on which the information was received by the chair of the arbitration panel; and
- b) if the chair of the arbitration panel has not received the necessary information within 60 days after the date on which that notice was sent, the arbitration decision will, unless the competent authorities decide otherwise, be reached without taking into account that information even if the chair of the arbitration panel receives it later and the decision will be communicated to the competent authorities within 240 days after the date on which the notice was sent.

The competent authority of the Contracting State to which the request for arbitration was submitted will communicate the decision to the person who made the request for arbitration.

14. Failure to communicate the decision within the required period

In the event that the decision has not been communicated to the competent authorities within the period provided for in paragraph 13, the competent authorities and the person directly affected by the case may agree to extend that period for a period not exceeding 180 days or, if they fail to do so within 30 days after the end of the period provided for in paragraph 13, the

competent authorities will appoint a new arbitrator or arbitrators in accordance with paragraph 5.

15. Final decision

The arbitration decision will be final, unless that decision is found to be unenforceable by the courts of one of the Contracting States due to a violation of paragraphs 5 and 6 of Article 24 of the Convention or of any procedural rule in the Terms of Reference or in this arrangement that may reasonably have affected the decision.

16. Implementing the arbitration decision

The competent authorities will implement the arbitration decision within the period of 180 days after the communication of the decision to them by reaching a mutual agreement on the case that led to the arbitration.

The period may be extended by the period agreed on by the competent authorities and the person directly affected by the case.

17. Final provisions

This arrangement applies to any request for arbitration made pursuant to paragraph 5 of Article 24 of the Convention after that provision has become effective.

If a case has been presented by a person to the competent authority of a Contracting State and the information specified in paragraph 2 has been presented to the competent authority of the other Contracting State before the entry into force of the Protocol signed at Stockholm on 5 December 2013, the case will be considered to have been presented to the competent authority of that other Contracting State on the date of the entry into force of that Protocol.

If the competent authorities have decided that the case is not suitable for resolution through arbitration in accordance with the provisions of subparagraph (b) of paragraph 7 of Article 24 of the Convention, the competent authority referred to in paragraph 1 of Article 24 of the Convention will notify the person who made the request for a mutual agreement procedure of such decision.

The competent authorities may modify or supplement this arrangement by an exchange of letters between them.

Signed in duplicate, in the English language.

For the Competent Authority of Japan

For the Competent Authority of Sweden