

Implementing Arrangement between the Competent Authorities of Japan and of the Republic of Singapore regarding Part VI of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting

The competent authorities of Japan and of the Republic of Singapore (hereinafter referred to as the “Contracting States”) have established this mode of application of the arbitration proceedings provided for in Part VI of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (hereinafter referred to as “the Multilateral Convention”).

This Arrangement is established pursuant to Article 25 of the Agreement between the Government of Japan and the Government of the Republic of Singapore for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, signed at Singapore on 9 April 1994, as amended by the Protocol signed at Singapore on 4 February 2010 (hereinafter collectively referred to as “the Agreement”) and paragraph 10 of Article 19 of the Multilateral Convention.

This Arrangement is based on the reservations and notifications submitted to the Depositary of the Multilateral Convention by Japan on 26 September 2018 and by the Republic of Singapore on 21 December 2018.

The competent authorities will follow the procedures in this Arrangement in good faith.

Section 1. Request for submission of case to arbitration

1. A request that unresolved issues arising from a case presented under paragraph 1 of Article 25 of the Agreement be submitted to arbitration pursuant to paragraph 1 of Article 19 of the Multilateral Convention (hereinafter referred to as a “request for arbitration”) will be made in writing and sent to the competent authority of the Contracting State of residence of the person who presented the case (or, if the case comes under paragraph 1 of Article 24 of the Agreement, to the competent authority of the Contracting State of which the person who presented the case is a national) through:

- a) (in the case of Japan): Office of Mutual Agreement Procedures, National Tax Agency; or
- b) (in the case of the Republic of Singapore): Inland Revenue Authority of Singapore (hereinafter referred to as “IRAS”).

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

3. Within 10 days after the receipt of the request, the competent authority which received it without any indication that it was also sent to the other competent authority will send a copy of that request and the accompanying statements to the other competent authority.

Section 2. Minimum information necessary to undertake substantive consideration of the case

1. For the purposes of Article 19 of the Multilateral Convention, references to “the information necessary to undertake substantive consideration of the case” and “the minimum information necessary for each competent authority to undertake substantive consideration of the case” will be understood as follows:

- a) for Japan, the information set out in the Commissioner’s Directive on the Mutual Agreement Procedure issued on 25 June 2001, as such directive may be amended from time to time;
- b) for the Republic of Singapore, the information set out in the IRAS e-tax guides entitled “Avoidance of Double Taxation Agreements (DTAs)” and “Transfer Pricing Guidelines”, as

such guides may be amended from time to time; and

- c) any other specific additional information requested by the competent authority within three calendar months after the receipt of the request for a mutual agreement procedure (or a copy thereof from the other competent authority).

The competent authorities will notify each other of any significant changes that are made with respect to the information requirements provided in their domestic guidance relevant to a request for a mutual agreement procedure.

2. The competent authorities will confirm to each other the start date referred to in paragraphs 8 and 9 of Article 19 of the Multilateral Convention.

Section 3. Terms of Reference

1. Within 60 days after the request for arbitration (or a copy thereof) has been received by both competent authorities, the competent authorities will decide on the issues to be resolved by the arbitration panel and communicate them in writing to the person who made the request for arbitration. This will constitute the “Terms of Reference” for the case.

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

2. If the Terms of Reference have not been communicated to the person who made the request for arbitration within the period referred to in paragraph 1, that person and each competent authority may, within 30 days after the end of that period, communicate in writing to each other a list of issues to be resolved by the arbitration. All 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 section 4, the chair of the arbitration panel (hereinafter referred to as “the Chair”) will communicate to the competent authorities and the person who made the request for arbitration 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 and the person who made the request for arbitration. 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.

Section 4. Appointment of arbitrators

1. In accordance with the provisions of paragraph 1 of Article 20 of the Multilateral Convention, the competent authorities mutually decide that the following rules will govern the appointment of the members of an arbitration panel, notwithstanding the provisions of paragraphs 2 through 4 of that Article:

- a) Each competent authority will appoint one panel member within 90 days after the request for arbitration (or a copy thereof from the other competent authority). The two members so appointed will, within 60 days after the latter of their appointments, appoint the third member who will serve as the Chair. The Chair will not be a national or resident of either Contracting State.
- b) In the event that a competent authority fails to appoint a member of the arbitration panel within the time period specified in subparagraph a), a member will be appointed on behalf of that

competent authority by the other competent authority within 30 days after the time period specified in subparagraph a).

- c) If the two initial members fail to appoint the Chair within the time period specified in subparagraph a), the competent authorities will decide on the mode of appointment in order to appoint the Chair within 90 days after the latter appointment of the two members.

2. Except to the extent that the competent authorities mutually decide on different rules, the procedures provided in this section will apply with the necessary adaptations if for any reason it is necessary to replace an arbitrator after the arbitration proceedings have begun. In such circumstances, the competent authorities will also decide on necessary adaptations, as appropriate, to the deadlines provided in section 5.

3. An arbitrator will be considered to have been appointed when a letter confirming that appointment and signed by both the arbitrator and the person or persons who have the power to appoint that arbitrator has been communicated to both competent authorities.

4. The competent authorities will appoint arbitrators who have expertise or experience in international tax matters. They need not, however, have experience as either a judge or arbitrator.

Each arbitrator appointed to the arbitration panel will be impartial and independent of the competent authorities, tax administrations, and ministries of finance of the Contracting States and of all persons directly affected by the case (as well as their advisors and any related persons) at the time of accepting an appointment, maintain his or her impartiality and independence throughout the arbitration proceedings, and avoid any conduct for a reasonable period of time thereafter which may damage the appearance of impartiality and independence of the arbitrators with respect to the arbitration proceedings. In particular:

- a) No arbitrator may be employed in any capacity by the competent authority, tax administration or ministry of finance of either Contracting State or by any person directly affected by the case (or by their advisors or any related persons) at the time of accepting his or her appointment.
- b) No arbitrator will have been employed in any capacity by the competent authority, tax administration or ministry of finance of either Contracting State or by any person directly affected by the case (or by their advisors or any related persons) in the period of three years preceding his or her appointment.
- c) No arbitrator will accept employment in any capacity with the competent authority, tax administration or ministry of finance of either Contracting State or with any person directly affected by the case (or with their advisors or any related persons) in the period of twelve months following the date when the arbitration decision is delivered.
- d) Each arbitrator appointed to the arbitration panel will execute a written certification with respect to his or her impartiality and independence. The arbitrators will undertake to promptly disclose to both competent authorities, in writing, any new facts or circumstances that arise during or following the arbitration proceedings that might give rise to doubts with respect to their impartiality or independence.

For the purposes of this paragraph, a person who has accepted an appointment as an arbitrator in another arbitration proceeding pursuant to Part VI of the Multilateral Convention, or pursuant to the provisions of any other bilateral or multilateral agreement providing for the arbitration of unresolved issues in a mutual agreement procedure case, will not be considered based on such appointment to be employed, or to have been employed, by the competent authority, tax administration or ministry of finance of a Contracting State.

5. The competent authorities will decide on a list of persons who are qualified and willing to serve as the Chair.

Section 5. Arbitration process

1. Unless the competent authorities decide to use the approach described in paragraph 8 with respect to a given case in the Terms of Reference, each competent authority will provide to the arbitration panel and to the other competent authority, within 120 days after the appointment of the Chair, any information that it considers necessary for the arbitration panel to reach its decision. That information would include a description of the facts and of the unresolved issues to be decided together with the position of the competent authority concerning these issues and the arguments supporting that position. Unless the competent authorities decide otherwise, the arbitration panel may not take into account any information (including any information provided by the person who made the request for arbitration or his or her representatives in writing under paragraph 3) that was not available to both competent authorities before both competent authorities received the request for arbitration (or a copy thereof).

2. In the event that a competent authority fails to submit the information described in paragraph 1 within the period of time provided for in that paragraph, such a failure will have no effect on the deadlines for the arbitration proceedings provided in this section.

3. The person who made the request for arbitration may, either directly or through his or her representatives, present his or her position to the arbitrators in writing to the same extent that he can do so during the mutual agreement procedure. Any written materials prepared by the person who made the request for arbitration or his or her representatives will be submitted to the arbitrators by the competent authorities. Such materials will only be presented to the arbitrators if they are provided to both competent authorities within 120 days after the communication of the Terms of Reference to the person who made the request for arbitration.

4. Within 30 days after the Chair has informed the competent authorities that a meeting of the arbitration panel would be held, the competent authorities will decide when and where the meeting will be held and will communicate that information to the arbitrators.

5. The arbitrators will decide the issues submitted to arbitration in accordance with the applicable provisions of the Agreement, as modified by the Multilateral Convention, and, subject to these provisions, of those of the domestic laws of the Contracting States. Issues of interpretation of the Agreement, as modified by the Multilateral Convention, will be decided by the arbitrators in the 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.

6. Subject to the provisions of the Agreement, as modified by the Multilateral Convention, and of this Arrangement and the Terms of Reference, the arbitrators will adopt those procedural and evidentiary rules that they deem necessary to resolve the issues set out in the Terms of Reference.

7. Unless the competent authorities decide otherwise, the arbitration decision will be delivered to the competent authorities in writing within 365 days after the date of the appointment of the Chair and will indicate the sources of law relied upon and the reasoning which led to its result. The sources of law and the reasoning will not be communicated to any party other than the competent authorities,

unless the competent authorities decide otherwise. The arbitration decision will be adopted by a simple majority of the arbitrators. The arbitration decision will have no precedential value.

8. a) If the competent authorities decide to use the approach described in this paragraph with respect to a given case in the Terms of Reference, each competent authority will, within 90 days after the appointment of the Chair, submit to each arbitrator and to the other competent authority a proposed resolution, not exceeding 5 pages, which addresses all unresolved issue(s) in the case (taking into account all matters in that case previously decided between the competent authorities). The proposed resolution will be limited to a disposition of specific monetary amounts (for example, of income or expense) or, where specified, the maximum rate of tax that may be charged pursuant to the provisions of the Agreement (as it may be modified by the Multilateral Convention), for each adjustment or similar issue in the case. In a case in which the competent authorities have been unable to reach a decision on an issue regarding the conditions for application of a provision of the Agreement (as it may be modified by the Multilateral Convention) (hereinafter referred to as a “threshold question”), such as whether an individual is a resident or whether a permanent establishment exists, the competent authorities may submit alternative proposed resolutions with respect to issues the determination of which is contingent on resolution of such threshold questions.
- b) Each competent authority may also submit a supporting position paper, not exceeding 30 pages excluding annexes, for consideration by the arbitrators. Any such supporting position paper will be submitted to the arbitrators and to the other competent authority within the period of time provided for in subparagraph a). Any annex to a supporting position paper will be a document that was provided by one competent authority to the other, or by the person directly affected by the case to both competent authorities, for use in the negotiation.
- c) In the event that one of the competent authorities fails to submit a proposed resolution within the period of time provided for in subparagraph a), the arbitration panel will select as its decision the proposed resolution submitted by the other competent authority.
- d) Each competent authority may also submit a reply submission, not exceeding 10 pages excluding annexes, with respect to the proposed resolution and supporting position paper submitted by the other competent authority. Any such reply submission will be submitted to the arbitrators and to the other competent authority within 150 days after the appointment of the Chair. Any annex to a reply submission will be a document that was provided by one competent authority to the other, or by the person directly affected by the case to both competent authorities, for use in the negotiation.
- e) As far as possible, the arbitrators will use teleconferencing to communicate between themselves and with both competent authorities. If the Chair has notified the competent authorities that a face-to-face meeting of the arbitration panel would be held, the competent authorities will decide whether that meeting is necessary and, if so, when and where the meeting will be held and will communicate that information to the arbitrators within 30 days after notification from the Chair.
- f) The arbitration panel will select as its decision one of the proposed resolutions for the case submitted by the competent authorities with respect to each issue and any threshold questions, and will not include a rationale or any other explanation of the decision. The arbitration decision will be adopted by a simple majority of the arbitrators. Unless the competent authorities decide otherwise, the arbitration decision will be delivered to the competent authorities in writing within 60 days after the reception by the arbitrators of the last reply submission or, if no reply submission has been submitted, within 150 days after the appointment of the Chair. The arbitration decision will have no precedential value.

Section 6. Communication of information and confidentiality

1. The competent authorities will ensure that all persons considered to be persons or authorities to whom information may be disclosed in accordance with paragraph 1 of Article 21 of the Multilateral Convention (including members of the arbitration panel, a maximum of three staff per member and prospective arbitrators) agree in written statements sent to each competent authority, prior to acting in the arbitration proceedings, to abide by and be subject to the confidentiality and non-disclosure provisions of paragraph 2 of Article 26 of the Agreement and of the applicable domestic laws of the Contracting States.
2. Before the Chair is appointed, the competent authorities will send any correspondence concurrently to both members of the arbitration panel.
3. After the Chair is appointed, unless decided otherwise by the competent authorities and the Chair, the competent authorities will send any correspondence to the Chair (with a copy sent to the other competent authority). The Chair will send any correspondence from the arbitrators to the competent authorities concurrently to both competent authorities.
4. Except with regard to administrative or logistical matters, no arbitrator will have any *ex parte* communications with one competent authority with respect to the mutual agreement procedure case that resulted in the arbitration proceeding.
5. All communication, except with regard to administrative or logistical matters, between the arbitrators and the competent authorities will be in writing.
6. No substantive discussions may take place without all three arbitrators present.
7. Except as permitted pursuant to paragraph 3 of section 5, no arbitrator will have communications regarding the issues or matters before the arbitration panel with the following persons during or subsequent to the arbitration proceedings:
 - a) the person who presented the case;
 - b) any other person whose tax liability to either Contracting State may be directly affected by a mutual agreement referred to in paragraphs 2 and 3 of Article 25 of the Agreement reached as a result of the case; or
 - c) their representatives or agents.
8. At the termination of the arbitration proceedings each arbitrator will immediately destroy all documents or other information received in connection with the arbitration proceedings, and then will notify both competent authorities in writing of doing so.

Section 7. Suspension of a mutual agreement procedure and failure to provide information in a timely manner

1. Where a competent authority has suspended the mutual agreement procedure under paragraph 2 of Article 25 of the Agreement because a case with respect to one or more of the same issues is pending before court or administrative tribunal, the period provided in subparagraph b) of paragraph 1 of Article 19 of the Multilateral Convention will stop running until the case pending before the court or administrative tribunal has been suspended or withdrawn.

In such a case, the competent authority will, within 30 days after the suspension of the mutual agreement procedure has begun, notify the person who presented the case and the other competent authority of the commencement of the suspension and will also, within 30 days after the case pending before the court or administrative tribunal has been suspended or withdrawn, notify the person who

presented the case and the other competent authority of the end of the suspension of the mutual agreement procedure.

2. Where a person who presented a case and a competent authority have agreed to suspend the mutual agreement procedure, the period provided in subparagraph b) of paragraph 1 of Article 19 of the Multilateral Convention will stop running until the suspension has been lifted.

In such a case, the competent authority will, within 30 days after the suspension has begun, notify the other competent authority of the commencement of the suspension and will also, within 30 days after the suspension has been lifted, notify the other competent authority of the end of the suspension.

3. Where both competent authorities decide that a person directly affected by the case has failed to provide in a timely manner any additional material information requested by either competent authority after the start of the period provided in subparagraph b) of paragraph 1 of Article 19 of the Multilateral Convention, that period will be extended for an amount of time equal to the period beginning on the date by which the information was requested and ending on the date on which that information was provided.

In such a case, the competent authorities will, within 30 days after the decision, notify the person who presented the case of the extension of the period.

Section 8. Costs

1. Unless decided otherwise by the competent authorities:

- a) each competent authority will bear the costs of its appointed arbitrator and its own expenses;
- b) the costs of the Chair will be borne by the competent authorities in equal shares;
- c) other costs related to any meeting of the arbitration panel will be borne by the competent authority that hosts that meeting; and
- d) other expenses associated with the conduct of the arbitration proceedings that both competent authorities have agreed to incur will be borne by the competent authorities in equal shares.

2. The person who made the request for arbitration will bear the costs related to his or her own participation in the arbitration proceedings (including travel costs incurred for any meeting with the competent authority and costs related to the preparation and presentation of his or her views).

3. 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, taking the remuneration of the two other arbitrators into account.

Section 9. 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 7 or subparagraph f) of paragraph 8 of section 5, as the case may be, or within any other period decided on by the competent authorities, the fees of each arbitrator will be limited to an amount which will be bilaterally decided. In such a case, the competent authorities may decide to appoint new arbitrators in accordance with section 4.

The date of such decision to appoint new arbitrators will, for the purposes of the subsequent application of section 4, be deemed to be the date when the request for arbitration has been received by both competent authorities.

Section 10. Where no arbitration decision will be provided

If the arbitration proceedings are terminated for the reason referred to in subparagraph b) of paragraph 12 of Article 19, subparagraph b) of Article 22 or paragraph 5 of Article 23 of the Multilateral

Convention, the competent authorities will confirm such termination in writing, and consult with each other to determine subsequent proceedings.

Section 11. Final Decision

1. If a final decision by a court of one of the Contracting States holds that the arbitration decision is invalid, the arbitration decision will not be binding on the Contracting States.

In such a case, the request for arbitration will be considered not to have been made, and the arbitration proceedings will be considered not to have taken place (except for the purposes of Articles 21 and 25 of the Multilateral Convention and sections 6 and 8).

In such a case, the person who made the request for arbitration may make a new request for arbitration, which will be accepted unless the competent authorities mutually decide that the actions of that person or its representatives were the main reason for the invalidation of the arbitration decision.

2. It is understood that ii) of subparagraph b) of paragraph 4 of Article 19 of the Multilateral Convention is intended to apply where, under the domestic laws of a Contracting State, a court has invalidated the arbitration decision based on a procedural or other failure or other conduct that has materially affected the outcome of the arbitration proceeding, which may include:

- a) a violation of the impartiality or independence requirements applicable to arbitrators pursuant to Article 20 of the Multilateral Convention and section 4;
- b) a breach of the confidentiality requirement applicable to arbitrators pursuant to Article 21 of the Multilateral Convention and section 6;
- c) any other failure to adhere to the procedural requirements provided in Part VI of the Multilateral Convention and this Arrangement; or
- d) collusion between the person who presented the mutual agreement procedure request and one of the Contracting States.

3. It is understood that paragraphs 1 and 2 do not provide independent grounds for the invalidation of an arbitration decision where such grounds do not exist under the domestic laws of the Contracting States.

Section 12. Implementing the arbitration decision

The competent authorities will implement the arbitration decision within 180 days after the communication of the decision to them by reaching a mutual agreement referred to in paragraphs 2 and 3 of Article 25 of the Agreement on the case that led to the arbitration. The period may be shortened or extended to the period decided on by the competent authorities.

Section 13. Entry into effect of Part VI of the Multilateral Convention

1. As provided by Article 36 of the Multilateral Convention, the provisions of Part VI of the Multilateral Convention will have effect with respect to cases presented to a competent authority on or after the later of the dates on which the Multilateral Convention has entered into force for each of the Contracting States.

2. Pursuant to the reservation provided in paragraph 2 of Article 36 of the Multilateral Convention, Part VI of the Multilateral Convention will apply to a mutual agreement procedure case presented to the competent authority prior to the later of the dates on which the Multilateral Convention has entered into force for each of the Contracting States, only to the extent that the competent authorities mutually decide that it will apply to that specific case.

Within 10 days after such a decision, the competent authorities will provide written notification to the person who presented the case of (i) the decision by the competent authorities and (ii) the start date of the two-year period (such a decision will specify which of the two competent

authorities will provide this notification).

Section 14. Reservations with respect to the scope of cases that will be eligible for arbitration under the provisions of Part VI of the Multilateral Convention

Pursuant to subparagraph a) of paragraph 2 of Article 28 of the Multilateral Convention, the following reservations have been made with respect to the scope of cases that will be eligible for arbitration under the provisions of Part VI of the Multilateral Convention:

- a) By Japan
 - i) Japan reserves the right to exclude from the scope of Part VI of the Multilateral Convention with respect to the Agreement cases falling within the provisions of paragraph 3 of Article 4 of the Agreement.
 - ii) Where a reservation made by the Republic of Singapore pursuant to subparagraph a) of paragraph 2 of Article 28 of the Multilateral Convention exclusively excludes, whether or not by referring to its domestic law, from the scope of Part VI of the Multilateral Convention cases of taxation in the Republic of Singapore, Japan reserves the right to exclude from the scope of Part VI of the Multilateral Convention with respect to the Agreement cases of taxation in Japan which are analogous to the cases referred to in the Republic of Singapore's reservation.
- b) By the Republic of Singapore

The Republic of Singapore reserves the right to exclude from the scope of Part VI of the Multilateral Convention cases involving the application of its domestic general anti-avoidance rules contained in Section 33 of the Income Tax Act, case law or juridical doctrines. Any subsequent provisions replacing, amending or updating these anti-avoidance rules would also be comprehended. The Republic of Singapore shall notify the Depositary of any such subsequent provisions.

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 the Republic of
Singapore