



# KPMG Japan Tax Newsletter

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## AMENDED JAPAN-SWITZERLAND TAX TREATY

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On 16 July 2021, the Government of Japan and the Swiss Federal Council signed the 'Protocol Amending the Convention between Japan and Switzerland for the Avoidance of Double Taxation with respect to Taxes on Income' (Protocol). The Protocol amends part of the current tax treaty, which entered into force in 1971 and was partly amended in 2011.

Although the Governments of Japan and the Swiss Federal Council signed the 'Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting' (MLI), both governments did not choose the current tax treaty as a Covered Tax Agreement in the MLI. Accordingly, the MLI will not apply to either the current tax treaty or the Protocol, although some provisions of the Protocol are in line with the provisions of the MLI.

We have set out in this newsletter the main points of the amendments and the entry into force.

## I. Main Points of Amendments

### 1. Business Profits (Article 7)

The amended Article 7 introduces provisions concerning taxation of business profits attributable to a permanent establishment of a foreign enterprise, under which business profits are calculated by recognizing internal dealings between a head office and its branches and by applying the arm's length principle. This is the same as Article 7 of the OECD Model Tax Convention, which adopted the Authorised OECD Approach as an approach to calculate income attributable to a permanent establishment.

### 2. Associated Enterprises (Article 9)

The clause for corresponding adjustments is amended in line with Article 17 of the MLI. Under the current tax treaty, corresponding adjustments are made based on an agreement through consultation with the competent authorities of the Contracting States. Under the amended tax treaty, the competent authorities of the Contracting States will consult each other if necessary.

### 3. Dividends (Article 10)

Reduced tax rates on dividends in the source country are amended as follows:

Reduced tax rates	Beneficial owner	
	Before amendment	After amendment
0%	<ul style="list-style-type: none"> <li>A company holding directly or indirectly <u>at least 50%</u> of the equity interest<sup>(*)</sup> of the dividend paying company for <u>6 months or more</u></li> <li>A pension fund or pension scheme</li> </ul>	<ul style="list-style-type: none"> <li>A company holding directly or indirectly <u>at least 10%</u> of the equity interest<sup>(*)</sup> of the dividend paying company for <u>365 days or more</u></li> <li>A pension fund or pension scheme</li> </ul>
5%	A company holding directly or indirectly at least 10% of the equity interest <sup>(*)</sup> of the dividend paying company for 6 months or more	/
10%	Other than the above	Other than the above

(\*) Equity interest means the voting power where the dividend paying company is a resident of Japan, and the capital or voting power where the dividend paying company is a resident of Switzerland, respectively.

### 4. Interest (Article 11)

Reduced tax rates on interest in the source country are amended as follows:

Reduced tax rates	Beneficial owner	
	Before amendment	After amendment
0%	<ul style="list-style-type: none"> <li>Government, local authority, central bank</li> <li>Bank, Insurance company, Securities dealer</li> <li>Pension fund or pension scheme, etc.</li> </ul>	All
10%	Other than the above	

Note that a reduced tax rate of 10 percent is applied to contingent interest payments (payments of interest determined by reference to receipts, sales, income, profits or other cash flow of the debtor or a related person, to any change in the value of any property of the debtor or a related person or to any dividend, partnership distribution or similar payment made by the debtor or a related person, or any other interest similar to such interest).

#### 5. Remuneration (Article 15)

The determination of whether or not the period of stay in the other Contracting State does not exceed in the aggregate 183 days, which is one of the conditions for applying the tax exemption for short-term assignment, is amended from a calendar year basis to a 12-month period basis as follows:

Before amendment	After amendment
The recipient is present in that other Contracting State for a period or periods not exceeding in the aggregate 183 days <u>in the calendar year concerned.</u>	The recipient is present in that other Contracting State for a period or periods not exceeding in the aggregate 183 days <u>in any 12-month period commencing or ending in the calendar year concerned.</u>

#### 6. Directors' Fees (Article 16)

The current tax treaty does not include a definition of directors. Accordingly, directors (torishimariyaku), executive officers (shikkouyaku), and statutory auditors (kansayaku) under Japanese domestic law are considered persons to be covered by Article 16 under the current tax treaty for Japan. The Japanese text of Article 16 is amended and only members of the board of directors, or of a similar organ will be covered by Article 16 under the amended tax treaty.

#### 7. Mutual Agreement Procedure (Article 25)

A taxpayer is allowed to raise a Mutual Agreement Procedure (MAP) request only to the competent authority of a Contracting State in which

they are resident under the current tax treaty. A taxpayer will be able to raise a MAP request to the competent authority of either Contracting State under the amended tax treaty.

In addition, clauses for arbitration proceedings are newly introduced in paragraphs 5 through 12 of Article 25. Under the newly introduced clauses, where a person has presented a case to the competent authority of a Contracting State on the basis that the actions of one or both of the Contracting States have resulted for that person in taxation not in accordance with the provisions of this tax treaty, and the competent authorities are unable to reach an agreement to resolve that case within 3 years, the case shall be resolved through arbitration conducted at the request of the presenter.

**8. Prevention of Treaty Abuse (Protocol 1 of the Current Tax Treaty)**

Protocol 1 of the current tax treaty provides a Principal Purpose Test (PPT) which is one of the provisions for prevention of treaty abuse. The content of the PPT is amended in line with Article 7 of the MLI.

**II. Entry into Force**

After the completion of the domestic procedures in each of the two countries (approval by the national Diet for Japan), each of the two countries shall send through diplomatic channels to the other country the notification confirming the completion of its internal procedures. The Protocol will enter into force on the 30th day after the date of receipt of the latter notification and will have effect as follows:

Japan	Taxes levied on the basis of a taxable year	Taxes for any taxable years beginning on or after 1 January in the calendar year next following that in which the Protocol enters into force
	Taxes levied not on the basis of a taxable year	Taxes levied on or after 1 January in the calendar year next following that in which the Protocol enters into force
Switzerland	Taxes withheld at source	Amounts paid or credited on or after 1 January in the calendar year next following that in which the Protocol enters into force
	Other taxes	Taxable years beginning on or after 1 January in the calendar year next following that in which the Protocol enters into force

Notwithstanding the above, the provisions of MAP (paragraph 1 of Article 25) and the provisions concerning arbitration proceedings (paragraph 5 through 12 of Article 25) as amended by the Protocol will be applied as follows:

<p>MAP</p>	<p>The provisions of MAP will have effect from the date of entry into force of the Protocol without regard to the date on which the taxes are levied or the taxable year to which the taxes relate.</p>
<p>Arbitration proceedings</p>	<p>The provisions concerning the arbitration proceedings will have effect from the date of entry into force of the Protocol with respect to:</p> <ul style="list-style-type: none"> <li>• Cases that are under consideration by the competent authorities of the Contracting States on the date on which the Protocol enters into force. (For such cases, no unresolved issues arising therefrom will be submitted to arbitration earlier than 3 years after the date on which the Protocol enters into force.)</li> <li>• Cases that come under consideration by the competent authorities of the Contracting States after the date on which the Protocol enters into force.</li> </ul>

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