

25 January 2013

KPMG Japan tax newsletter

Protocol to Japan-US Tax Treaty - Signed



On 25 January 2013 (24 January, US time), the governments of Japan and the United States signed a new Protocol to the Japan-US tax treaty.

We have set out below the main amendments in the Protocol.

1. Dividends (Article 10)

Requirements to exempt dividends from subsidiaries from withholding tax will be relaxed as follows:

	Current Tax Treaty	New Tax Treaty
Holding ratio	More than 50%	50% or more
Holding period	12 months or more	6 months or more

2. Interest (Article 11)

Taxation of interest arising from a source country will be eliminated in principle.

Current Tax Treaty		New Tax Treaty
In principle:	10%	0%
Interest paid to financial institutions, etc.:	0%	

Note that a source country will have the taxing rights on 'interest that is 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'. In this case, the withholding tax rate shall not exceed 10 percent.

3. Capital Gains (Article 13)

The clause for capital gains derived from indirect holding of real property will be amended. By virtue of the amendment, where a resident of the US sells shares in a company holding real property located in Japan, capital gains arising from the sale will be taxable in Japan, even if the share-issuing company is not a resident of Japan. Under the current tax treaty, Japan's taxation rights in these cases are limited to a sale of shares in a Japanese company.

4. Others

- Mutual Agreement Procedure (Article 25) – Clauses for arbitration will be included.
- Assistance in the Collection of Taxes (Article 27) – While the current tax treaty covers only treaty shopping cases, the new treaty will covers much broader cases.

5. Entry into Force

This Protocol shall enter into force on the date of the exchange of instruments of ratification after the legal procedures of each of the Contracting States and shall be applicable as follows in principle:

Taxes withheld at source	Amounts paid or credited on or after the first day of the third month next following the date on which the Protocol enters into force
Other taxes	Taxable years beginning on or after the first day of January next following the date on which the Protocol enters into force

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